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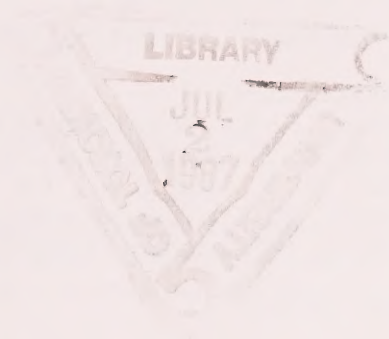




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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

TUESDAY, SEPTEMBER 30, 1986

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Knight, D. S. (Halton-Burlington L) for Mr. Offer

McNeil, R. K. (Elgin PC) for Mr. O'Connor

Mitchell, R. C. (Carleton PC) for Mr. Villeneuve

South, L. (Frontenac-Addington L) for Mr. D. W. Smith

Clerk: Mellor, L.

Staff:

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Witnesses:

From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant  
Deputy Minister, Labour Policy and Programs

Klein, S. S., Policy Adviser, Labour Policy and Programs

From the Board of Trade of Metropolitan Toronto:

Wright, W. G., Chairman, Labour Relations Committee

Campbell, G. I., Vice-Chairman, Labour Relations Committee

Baker, J. A., Member, Labour Relations Committee

From the Business and Professional Women's Clubs of Ontario:

Neville, L., President

Shank, R. C., First Vice-President, Toronto Club

Lohnes, C., Chairperson, Public Affairs Committee, Toronto Club

From the Equal Pay Coalition:

Cornish, M., Chairperson

Spink, L., Member, Steering Committee



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, September 30, 1986

The committee resumed at 2:04 p.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

The Acting Chairman (Mr. Partington): Ladies and gentlemen, I call the meeting to order.

Would the members of the Board of Trade of Metropolitan Toronto come forward? Welcome to the committee. You have an hour for your presentation and questions from the committee. Perhaps you could identify yourselves and carry on.

BOARD OF TRADE OF METROPOLITAN TORONTO

Mr. Wright: Mr. Chairman, it is a pleasure for us to be here today. My name is Bill Wright. I am chairman of the labour relations committee of the Board of Trade of Metropolitan Toronto. Accompanying me today are Ms. Janice Baker, a member of the committee, and George Campbell, who is the vice-chairman of the committee.

We have not prepared a brief specific to the subject of Bill 105. It is our understanding that the committee has had the opportunity to review a summary of our submission to the consultation panel with respect to the green paper. It is not our intention to rehash what is discussed in the submission, other than to say that we continue to endorse the principles that are outlined therein. By way of general representations, we would also go on record as endorsing the submission of the Ontario Chamber of Commerce with respect to Bill 105.

As I indicated, it is not our intention or wish at this time to rehash many of the things that have been said with respect to the issue of pay equity, be it in the private or public sector. However, we would like to focus our comments on one particular area of concern that we believe to be of most significance for consideration by this committee. That is with respect to the interface of the contents of Bill 105 with the collective bargaining process in the public sector. I would like to call on Mr. Campbell at this time to speak to this issue.

Mr. Campbell: As Mr. Wright has indicated, we are concerned about a number of elements of equal value legislation but probably none more than the question of how equal value legislation and collective bargaining will interface; by that, we specifically mean once the legislation is enacted, once individual job evaluation systems have been established for each of the bargaining units or agents and once there is one job evaluation system in place that, presumably, will provide for equal value across all the bargaining groups and including the nonbargaining groups.



We raised the same issue with the public consultation panel. It continues to concern us greatly. We do not understand how each of the various bargaining agents, having established an equal value pay line across the various units, will still have freedom to bargain individually. Our understanding of the legislation is that once equal value is established, it is to remain in place. On those grounds, we do not see how individual bargaining agents can bargain off the common pay line without being in contravention of the equal value legislation.

14:10

To come somewhat closer to the civil service per se, the major bargaining agent is the Ontario Public Service Employees Union, representing almost all civil servants, excluding some of the crown agencies covered by the proposed legislation. OPSEU has not historically bargained one wage package for all the civil servants it represents. Rather, there are seven or eight separate groups for wage negotiation purposes. Over the years, the wage increases applicable to those groups through either negotiations or arbitration have not followed any necessary pattern in relation to one another.

Unless it is the intention of this legislation--and if it is, it is not apparent from the legislation--to require OPSEU to bargain wages for all employees at one table at one time, we fail to understand how, once having established a common equal value pay curve across its various units, that union and Management Board can continue to bargain separate wage agreements for each of those seven or eight categories of employees, yet at the same time maintain the principles of equal value.

If what is to occur is that wage negotiations for any one group will apply automatically to the wages of the employees in all the other groups because of the equal value curve, and if all those other groups continue to have the right to bargain independently, as they currently have, then it is our firm belief, as we have stated in two separate briefs to the public consultation panel to date, we will face artificially escalating wage increases based upon virtually continual negotiations even within the civil service.

As I have indicated, some unions have said they do not see that as being a problem, but we have not heard them answer the question of how it would work. If you take it outside the civil service as such and apply it to the private sector, let us use a hospital as an example, because some would see this legislation broadened at the present time. Within the civil service, as I have said, there is basically one major bargaining agent. There are hospitals in this province that bargain with as many as six separately certified bargaining agents.

If it were applied to that sector, the current bill would require separate evaluation systems with each of those unions and nonunionized groups. A curve would be established expressing equal value, and then presumably under the Labour Relations Act each of those bargaining agents would continue to have its right to bargain wages independently of that curve. To us, that is a fundamental concern about equal value legislation. It applies to most of the private sector as much as it does to the broader public sector, and we have not seen that matter addressed in this legislation, in the green paper or in any other form. That is the issue we wanted to discuss with this committee today.

The Acting Chairman: Are there any other comments? Perhaps you would like to reply to that.



Dr. McAllister: I would like to add a point of clarification. In your presentation, you seem to be under the misapprehension that this bill requires a pay-line approach to implementing pay equity. In fact, the bill is completely permissive in terms of the approach to adjustments which will be utilized, with the exception that there must be a minimum adjustment of the rate of pay for a female group to the rate of pay for a male group that is of equal value. However, this bill does not require a pay-line approach in implementing pay equity. It is permissive.

You may be confusing this with the Minnesota approach or perhaps with some language in the Manitoba bill, but Bill 105 is not a pay-line approach to implementing pay equity. If the parties choose to negotiate a pay-line approach in bargaining, or should an arbitrator or the commission choose to require it, then that is what you will end up with. But the bill is totally permissive as far as that approach is concerned.

Mr. Campbell: Perhaps the confusion is one of terms. If the bill is not to equate salaries between two bargaining groups, then I do have a fundamental misunderstanding of the legislation. If it is to establish equal value between employees in two different bargaining groups, then the problem remains how those unions continue to bargain independently once that value consideration has been established. Whether I use a pay line, a curve or whatever, the basic question is, if both are to receive X, how does either union then reserve the right to bargain independently of that determination?

Dr. McAllister: All right. You have raised two separate points, and I want to make sure the committee is clear that we have not required in this bill a pay-line approach to implementing pay equity, which is to utilize the statistical averaging technique in identifying a very specific adjustment that would be required.

Your second question, which I will treat separately, is, how does this bill deal with the relationship between pay equity adjustments that may be required during the proactive period and the rest of the collective bargaining process, given that this bill very clearly separates negotiations with regard to pay equity from the regular collective bargaining world and systems?

Mr. Campbell: Our real question is, what happens once pay equity has been implemented?

Dr. McAllister: What happens once the proactive period has been completed?

Mr. Campbell: Yes.

Dr. McAllister: After the completion of the proactive period, the bill provides that a full complaints-based system comes into play. At that time, the onus shifts to individuals and, most likely, to bargaining agents to complain to the commission should new gender-biased compensation practices be introduced. In other words, they can complain if they feel that new gender-biased practices are introduced or if relationships that they feel are necessary to meet the requirements of pay equity are upset.

Mr. Campbell: So that I can clarify the point somewhat, we are not referring to gender bias. We are talking about the normal process of collective bargaining. If we have two unions or, in the case of the civil service, two separate units within the Ontario Public Service Employees Union that bargain wages independently, and if we have established a relationship

between employees in two unions or two units of X and then one of those unions bargains and distorts that relationship, what is the result? What are the implications for pay equity?

Dr. McAllister: There could be a complaint to the pay equity commission that the new rate of pay reflects gender bias. The commission, of course, would have to make a determination of whether the new rate of pay reflects only gender bias or does not reflect gender bias at all. If you like, once the proactive period has been completed, any new pay adjustments that may flow from the collective bargaining process, if there is a feeling by an individual or a bargaining agent that gender bias has been reintroduced or newly introduced, will have to be dealt with through a complaints process. There is nothing in the bill to require those relationships that are established during the proactive period to be legislatively carried on into the future.

Mr. Campbell: In other words, if an organization establishes, at a cost of four per cent, five per cent or whatever, equal value among five bargaining agents--

Dr. McAllister: At a particular time.

Mr. Campbell: --so that we understand this, you are saying that once the initial period is completed, that relationship need no longer exist and bargaining carries on, unless it can be demonstrated that the change is strictly a result of gender bias. Where we establish that, that need not exist in the future.

Dr. McAllister: That is correct. Every case would have to be examined and it could be complainable in terms of whether the new rate of pay came about as a consequence of gender bias in compensation practices. The results of either newly arbitrated or newly negotiated collective agreements would be subject to the scrutiny of the Pay Equity Commission on a complaints basis.

Mr. Campbell: Once having established the base, it need not continue. That is very fundamental to the whole question of equal value.

Dr. McAllister: It need not continue as long as it can be shown that the changes are not due to gender bias; that is right. I want to stress that the commission will be looking for gender bias and people will be able to complain should relativities that were identified during the proactive period be upset. But it will be necessary for the commission to be convinced that the upsetting is due to gender bias. It is a new examination of evolving situations on a complaints basis.

14:20

Mr. Campbell: That is enlightening, to say the least. We had not understood that to be the case. We thought the principle was that, once having established equal value, it was meant to continue.

Dr. McAllister: It is meant to continue.

Mr. Campbell: If after five years market forces can come into play and you can demonstrate it is not as a result of gender bias that a previously established relationship has been changed, I, for one, have a different understanding of the thrust of the legislation.



Dr. McAllister: To paint a scenario, presumably the parties could argue that a new relationship that might be established following the proactive period was due to differences in strength in collective bargaining relationships, for example. It would be up to the commission to make a determination on whether that had a gender bias component to it or whether it was a legitimate factor responsible for differences in wages.

The gender bias requirement continues on and pay practices will be scrutinized on a complaints basis. I do not want to let you think that; because the commission will not be that type of body, looking for gender bias.

Mr. Campbell: It is a vitally important point, though.

The Acting Chairman: I guess the question you may raise is whether the change in conditions dictated by markets is interpreted as being gender bias or not. That is the question you raised.

Mr. Campbell: Exactly.

Dr. McAllister: Yes, and every case would have to be examined on a case-by-case basis. Even in the proactive period, there are provisions for exclusions of positions from the program. They may be excluded from pay equity programs if there are temporary labour market shortages which are responsible for anomalous or unusual rates of pay. Again, market forces would have to be examined and each case would have to be examined for gender bias.

Mr. Campbell: This is quite fascinating to me. It would be the case that in the civil service, as an example, there will be an exercise aimed at establishing equal value across six, seven or eight units, including nonunionized employees.

Dr. McAllister: Absolutely.

Mr. Campbell: Having gone through that process, those equal value considerations may well be changed through bargaining, provided that at bargaining and through interest arbitration in the case of this sector, that change is not based upon gender discrimination. The relationship established will likely be altered through time after the five-year period.

Dr. McAllister: I expect there will be changes in the specific relativities that are established during the proactive period and they will be scrutinized by the Pay Equity Commission because of complaints.

Ms. Gigantes: I think it is a very important point. If we look at section 26, I have to ask, in addition to the questions that have been asked and answered, when the commission looks at a complaint after the period of implementation of Bill 105, surely it will be looking at whether we are dealing with two groups of employees whose employment has the same level of skill, effort, responsibility and working conditions. To discuss market forces in that context is to confuse the issue. The commission will not be looking at market forces if it is using the test we have set up as the test for equity.

Mr. Campbell: Let me use a different example. I should not have introduced the marketplace. Let us say two units within the civil service have different bargaining objectives, which is common. One decides it wants a flat, across-the-board, cents-per-hour increase; the other decides it wants a percentage increase. That creates a disparity.

Ms. Gigantes: There is no problem with that. If you look at the definition of "compensation" in section 1, it covers all payments and benefits. You are talking about a pie.

Mr. Campbell: A cents-per-hour increase will create different increases at the top and bottom than a flat percentage, and that would change the relationships. That is what happens.

In that case, there is no gender bias. Those groups are free to bargain independently off that equal value consideration on that basis. There is no market concerned here. There is the interest of the members of each unit to achieve their objectives, which may be different from unit to unit. When you are dealing with six, seven or eight, history has shown they have different objectives in the civil service. That would be quite permissible.

Ms. Gigantes: You are talking about the effect of a flat-rate increase.

Mr. Campbell: I am talking about the effect of a different set of priorities from unit to unit or union to union. I am talking about the realities of collective bargaining.

Ms. Gigantes: I think in real terms, following on section 26, you could look forward to some complaints if, over a period of time, the different stances taken unit to unit produced results that upset an established norm of skill, effort, responsibility and working conditions. Obviously within any job category you will have changes in skill, effort, responsibility and working conditions. We see that all the time. Those things will change.

Mr. Campbell: Let us assume everything remains constant. For purposes of this argument, looking at the relationship between equal value and collective bargaining, you have to assume we are looking at a constant situation.

Ms. Gigantes: I do not think I quite followed you.

Mr. Campbell: If things change over time, then necessarily the equal value considerations against the job evaluation plans will also change.

Ms. Gigantes: That is correct.

Mr. Campbell: But if the changes are as a result of different bargaining priorities while the jobs remain constant, that is a different issue and that is really the issue we are trying to address.

Ms. Gigantes: No. What you have introduced is another concept which is the cents-per-hour increase producing different rates of compensation at different levels within a job group. That is a very different question. I think that confuses the issue.

Mr. Campbell: No, it is the real issue.

Ms. Gigantes: If section 26 is going to mean anything, it seems to me that kind of process would be open to complaint. Maybe section 26 does not mean anything, but we should find out.

Mr. Wright: From our perspective, the question we are raising is that if it is open to complaint, does this not leave the employer, be it the



public sector employer or the private sector employer, at risk when faced with certain demands at the bargaining table? It is a matter of record that different unions and different groups of employees have different priorities when they come to the bargaining table. If one group of employees wishes a percentage increase and another group wishes a flat increase, and both those increases in total across those units cost the same to the employer, and the employer agrees to those increases and then is placed at further risk because of a complaint under this bill, those costs can be escalated in one or other or both of the groups.

Ms. Gigantes: Or they might be de-escalated.

Mr. Wright: I do not know how they could be de-escalated since the bill prohibits any reduction.

Ms. Gigantes: We are talking about the period after implementation of the plan. That is the period during which reduction of wages is covered in this bill.

If you are talking about a situation where an employer makes two equivalent packages for him but they break down in different ways for the employees, and the employees in one group decide it upsets the equal pay framework in which everybody is supposed to be operating and against which our agreements will be tested, then the employer may be in for a new round of negotiations. But I do not see where he is in double jeopardy.

Mr. Wright: It seems to us this places the whipsaw hammer right in the hands of the unions.

Ms. Gigantes: I do not see that.

Mr. Wright: I suggest a strategy could be developed where this could be utilized to create the kinds of disparities that would give rise to inequities, which could then be complained of in order to generate further increases that really do not go to the issue of pay equity in any way, shape or form.

Mr. Gillies: Just so I understand what you are saying, is the suggestion that a bargained agreement may deliberately be skewed by one party or another to grant a larger increase to a group of men, with the knowledge that there can then be an application to the Pay Equity Commission to get a similar and additional increase for the female employees?

Mr. Wright: That is certainly a possibility. That could be one of the scenarios that could emanate from this, in my view.

Ms. Gigantes: One of the possible responses to that would be, "Go back and do your negotiation again; it did not come out right."

14:30

Mr. Wright: To put a slightly different light on it, let us take two units within the civil service which negotiate agreements that are not the same and change the pay relationships that were "equal value." Those two settlements are ratified by the employees; they are not even arbitrated. Differences emerge. Let us suggest there is no malice aforethought in anyone's mind, but there are now differences.

The employer remains at risk, under section 26, against the unit that ratified a deal to come back and say: "This is now gender discrimination, even though we ratified it. We should now get more based upon that." That is a very simple example of the potential results of legislation that cuts across bargaining rights of individual groups. That is what we continue to try to understand.

Ms. Hart: If I may add to that, is it not the requirement that the employer be now sensitized to this issue of pay equity? You do not have to agree to anything. Collective bargaining is the process of coming up with an agreement. You do not have to agree. That is one of the things going into the pot now that perhaps did not previously. Is that not what we are arguing about--the policy of paying women the same as men?

Mr. Campbell: One of the cornerstones of labour relations in this province that has just been reinforced by this government is that the parties should make their own deals at the bargaining table. That is why we now have first-contract legislation in place in Ontario. In fairness, in the civil service the employer and the union go to a third party to resolve disputes. That third party surely has the right to make a determination that may run contrary to the employees' interest relative to this legislation.

Ms. Hart: What I am talking about is right at the first level when you are at the negotiating table bargaining as employer and employee. There is an onus on the employer, on both parties really, to keep this issue in mind so they will come to an agreement that will withstand scrutiny. Is that not all we are saying?

Mr. Campbell: It would be in the first instance. The difficulty is when you start dealing with the second and the third and fourth union; as I have indicated earlier, in some cases there are six unions. Unless for all the other five you say it does not matter what your priorities were, the pattern is now established. The legislation does not say that those who follow the first bargain are precluded from bargaining their own deal. That is partially what we are trying to phrase with this committee.

The Acting Chairman: I guess one of your terms, too, is you might almost have to have it subject to a rollback if the commission finds it inappropriate to come up with an equity.

Mr. Polsinelli: It seems to me that the example that has been given with respect to section 26 is really stretching it. I do not think that is the intent of the section, but rather to deal with gender bias and compensation practices that the employer on his or her own initiative might undertake. If you have a disparity in bargaining positions and different contracts arise, this section would not apply.

Mr. Wright: That raises the general question of the merit in looking between separate units of employees in trying to determine whether there is indeed a pay inequity. It seems to us, if you can satisfy a test within any specific unit of employees that the pay system is such that it does not result in a gender-biased pay inequity, then there is within that unit no gender-biased pay inequity. To compare to another unit and to find there is a disparity in wages between those two units, not only with regard to one sex but also with regard to both sexes, would not in our mind seem to throw up the fact that there is a gender-biased pay inequity between those two units.

In our reading of it, however, the legislation would force you to make



that kind of a comparison and come to the conclusion that if there is a disparity under certain circumstances, it is prima facie based on gender bias. As long as you are faced with that and you have to cross units, the employer, be it public or private, is going to be at risk with respect to section 26. In terms of reaching a settlement between the parties that is going to satisfy the provisions of section 26, it has to be recognized in all reality and practicality that different groups of employees and different unions have very strong and philosophically deep-seated beliefs with respect to wage structures.

There are some unions and groups of employees dedicated to flat, across-the-board increases; there are others dedicated to percentage increases. When the employer is faced with those at the bargaining table saying you must reach a settlement that is not going to generate a potential dispute under section 26, it could place the employer in the position of having a lengthy and economically harmful strike to protect something that has no relationship to gender bias whatsoever but is simple hard-nosed collective bargaining and prevents the employer from satisfying the wishes of that group of employees.

Ms. Hart: I have a question on your statement. I gather from what you say you would prefer that the comparison be done within one bargaining unit. Is that right?

Mr. Wright: Absolutely.

Ms. Hart: How would you deal with the problem we heard about this morning: that the bargaining units themselves have in some cases been constructed on the basis of gender bias?

Mr. Campbell: I can answer that relative to this jurisdiction or any jurisdiction in which there is compulsory arbitration. The problem does not exist because, unlike the private sector situation where some would argue that females within a bargaining unit have not had the power to reach certain goals--I say some would argue; I would not argue that, but some would--in the civil service the record clearly shows that time after time the union proceeds to interest arbitration, looking for special-case treatment on salaries for specific groups.

That is the way it has always worked in this sector. This union has always had the right to make cases at arbitration and has won many for special groups within a unit. It would not in any sense weaken the ability of the union or the groups within it to argue those cases in this sector, because it has always been the case.

Ms. Hart: Except if they can only argue comparisons within the unit. The one we heard this morning was at York University, which is not within this legislation unless it is expanded. They have very few bases for comparison.

Mr. Campbell: With respect, within the civil service, if a dispute proceeds to arbitration, the union can make an argument for a group within that unit, not only relative to others within the unit but also relative to anything it chooses to make the comparison with.

Ms. Hart: Not under this legislation.

Mr. Polsinelli: Not under this legislation. The union would be--

Mr. Campbell: The Crown Employees Collective Bargaining Act

continues in place, and it is through that act that the rights to arbitration flow. I do not see that changing. They have that right to make special-case arguments for any group, as they do in hospitals all the time. The nurses will argue now that they are not paid properly relative to some other group either in society or in a different union. That is a common argument and the basis of most of the arguments.

Ms. Hart: But not on a gender basis. This is the first time they will be able to make that argument on a gender basis.

Mr. Campbell: All I am saying is the argument has always been made. They have never been foreclosed from arguing that they are underpaid relative to somebody. Confining this legislation within a group would not change that right. They have always had that right.

Ms. Hart: I do not think it has changed. They would not have that right. If we, in this legislation, confined it to one bargaining unit, that would take away a significant number of comparisons that could be used on a gender basis. Any union can say, "I want to be compared with somebody who gets paid more." That has always been the case, but not strictly on the basis of their sex.

Mr. Campbell: I think we are moving in circles. We are back to the original issue; that is, once having established equal value, do the individual groups reserve the right to bargain individually? The answer we heard earlier is that the equal value relationship can be altered as long as it is not altered on the basis of gender discrimination. That was not at all clear to me, for one.

14:40

Ms. Fish: I have a question of the ministry. If the deputant's interpretation is correct--and it sounded like the answer the parliamentary assistant gave to the question--does it mean the ministry and/or the Pay Equity Commission would receive favourably an argument that said the initial imbalance was the result of other than gender-driven bargaining factors?

Mr. Polsinelli: Is this at the time the adjustments are being made, during the five-year period?

Ms. Fish: The argument is being made that there is a finding that there is an inequity that has been gender driven, that has a gender differential in its result. The illustration the deputant gave was a percentage of four or five per cent. That is not what is important. The question was, "Following a process that would involve pay enrichment that would bring the various units into an equity position, could they then bargain separately?" The answer was, "Yes." The next question was, "Could the separate bargaining lead to an out-of phase?" The answer was, "Yes, so long as it was not gender driven." The illustration that was given by the ministry official moments ago included a suggestion of possibly a shortage in the market or a variety of other things that could come to bear.

I put the question: Will the commission or the ministry favourably receive submissions that would argue that the differentials that exist before any adjustments are made are there as a result of non-gender-driven bargaining or some other grounds?

Mr. Polsinelli: No. Once the gender basis is--



Ms. Fish: Why is it accepted afterwards? Why would the commission be prepared to accept those arguments following an adjustment if the commission were not prepared to accept them before an adjustment?

Mr. Polsinelli: Once it has been established that there is a difference in pay because of a gender basis, the pay equity plan will seek to eliminate it through the proactive phase. There will be no justification required if they are in favour of it or against it. If it has been established that there is a difference in pay based on gender, it will be remedied.

After the proactive phase, we hope we will be dealing with a more enlightened society. If other factors cause a difference in pay between the two groups, we would not attribute it, at this point, to some type of gender bias discrimination but rather differences in the market forces or different bargaining positions or powers.

Ms. Fish: That is part of the problem with the bill and the ongoing implementation. The argument given right now where there is a gender-specific result of inequity is that the result is because of non-gender-driven issues in bargaining or in market shortages. If we are prepared to pierce that veil in the first place and say, "No, A gender-specific result is prima facie evidence of a change in the balance being required," I can find no justification whatever for walking away from it five, six or 10 years down the road to permit any other explanation to come forward. We are either prepared to move on it or we are not. I think this goes to the heart of the bill.

Mr. Polsinelli: Section 26 specifies that if the employer implements gender-based compensation practices, it is a ground for complaint and the commission will have the authority to rectify them. If a payment practice can be identified as a gender-based discrimination, the commission will have authority to rectify it once a complaint has been lodged after the five-year period. Once pay equity has been achieved after the proactive stage, you cannot go before the commission because a difference in pay exists 10 years down the line. You must identify the difference in pay as being gender based and having originated as a gender-based compensation practice by the employer after the proactive stage. I believe the compensation deals with this.

Ms. Fish: I hear you, but I do not believe it deals at all with the fact that what we are trying to do in the bill in the first instance is say that there may be excuses given of a bargaining process or a market shortage that has resulted in the difference in valuation between a job that a man holds and a job that a woman holds. If there is a clear indication of a differential that groups by gender, we are not prepared to accept that. We are going to ensure that gets corrected. If we are saying that is the way we interpret those arguments the first time around, then why are we not using the same test the second time around? The ministry's answers suggest to me that the test used the first time around is abandoned in the second-time-around complaint. I think that is wrong.

Dr. McAllister: I think we should try to put it in a slightly different perspective. During the full complaints phase, if you like, the program switches gears to one which closely resembles, in terms of process, that which you find under the Canadian Human Rights Act or that which you find under the equivalent in Quebec. Each case will have to be considered on its merits.

The requirement remains in section 26, as it is in section 7, which is what a pay equity plan is to be, that an employer not engage in gender-biased

compensation practices. However, the bill does not provide that, following the proactive period, relationships which may have been identified as establishing pay equity in 1988 be frozen for ever. However, it does have a full complaints process available for people to examine any upsetting of established equities which may be made during the four-year proactive period. It is not as if the act then closes and you walk away from the situation. The onus does shift to a complaints-based program.

The requirement remains that employers not engage in gender-biased compensation practices. However, the rest of the world goes on: the employer has new jobs and the content of jobs changes. If there is a complaint, the content of jobs will have to be examined again to see that the jobs have not changed. Likewise, all factors which may influence compensation will have to be examined to determine whether there is gender bias.

I submit it would be the same sort of situation that the Canadian Human Rights Commission finds itself in when it is examining complaints with regard to compensation practices in the public service of Canada, where there are bargaining relationships and where changes take place in rates of pay and settlements are reached with regard to pay equity complaints from time to time. You take a window, you look at the problem at that time and you try to determine whether there is gender bias in the compensation practice.

Unfortunately, in the other jurisdictions there has not been beforehand a proactive period when people have actually identified in a comprehensive fashion where pay inequities may exist and tried to rectify them. It is a switching of gears, but the requirement that the employer not introduce or engage in gender-biased compensation practices remains.

Mr. Campbell: May I ask three quick questions relative to that? Section 26 talks about the employer not engaging in these practices. Does that mean that if you have a negotiated settlement ratified by the employees, section 26 would not apply?

If an arbitrator imposed that settlement in the civil service--the arbitrator is not the employer; he is neutral--would that mean section 26 applies?

If you were to apply this to the private sector--I am hypothesizing now--if that were to be the case and an employer settled with the union because the employer chose in the circumstances not to take a strike, would prima facie evidence in that case prove gender bias as it would before the fact?

Dr. McAllister: Let me put this in context. Once passed, assuming it is passed for the public service of Ontario, this bill will become a piece of antidiscriminatory legislation. It will be as it is in the Human Rights Code: parties in bargaining are bound. You made reference in your presentation to free collective bargaining and letting the parties reach settlements. In any collective bargaining that takes place at present in Ontario, the parties are bound by antidiscriminatory legislation in terms of the Ontario Human Rights Code, for example.

14:50

Mr. Campbell: It is not the same thing.

Dr. McAllister: All right. I would like to put free collective



bargaining in that particular context, because you have asked what the role is of the employers, to what extent they are bound by the requirements in not engaging in gender-biased compensation practices and still carrying on with free collective bargaining. If this bill is passed, in the public service of Ontario the employer and the parties in bargaining are not supposed to get themselves into a situation where they have agreed to a gender-biased compensation practice in bargaining. No doubt it will colour collective bargaining to a certain extent in terms of expecting that to be free from gender bias.

Mr. Mitchell: I am sorry; I am getting quite confused with all of this discussion that is going on. Are you suggesting to the committee that a particular group resolves those differences between genders and then the next round of negotiations comes up between the union and the employer--you stated earlier that the employer would be at fault.

To go back to a point that was raised here earlier, some unions do go for a percentage increase. They did. I am a former federal civil servant. My union always went for a percentage, not a flat rate. When it comes time to bargain they may have resolved all of these differences but this group, say it is computer operators, gets four per cent, computer technicians get 10 per cent and so on. All of a sudden, as the next one, two or three years go on, your percentage difference increases massively. Are you going to blame the employer or the employees for that, or are you starting now to tell those employees' unions that they can no longer bargain the way they want and they are all going to have to go to a flat-rate increase?

I am getting extremely confused by what you are telling us. I am sorry. Can you answer that? I do not know where you are coming from.

Dr. McAllister: The parties in bargaining and the employer ultimately, because it is the employer against whom complaints will be lodged, will have to scrutinize their pay and compensation practices and ensure that they are free from gender bias.

Mr. Mitchell: Now it becomes a ministry for labour. I am sorry, but that is the way you are making this bill appear, as a ministry for labour, and not recognizing the whole situation as it is in the outside world. You are going to blame the employer for something that he was forced into by employee bargaining. That is what you have told me.

Mr. Polsinelli: Mr. Mitchell, as parliamentary assistant to the minister and almost a lawyer, I reject that interpretation.

Mr. Mitchell: I always thought you were. It may be a false assumption.

Mr. Polsinelli: I reject that interpretation and that is an interpretation we were discussing earlier. The only thing an employer cannot do once the proactive phase has been implemented is participate in gender-biased compensation practices. That is something for which a complaint can be filed against him and the commission can take action on that.

If different groups receive different wage increases because of other factors that are not based on gender-biased compensation practices, then the bill does not address that.

The Acting Chairman: Excuse me. The idea is to question the people

presenting the brief, not to debate among the committee. Mr. Gillies, do you have a question?

Mr. Gillies: As far as I see it, the disagreement is simply this: The legislation calls for a one-time adjustment or implementation phase which is very proactive--I think we would agree on that--followed by a complaint-based system thereafter. Our party will be moving an amendment because we do not believe that is the route to go. We happen to believe there should be an ongoing monitoring to ensure that any gains in terms of equalizing wages that are made during the proactive stage should not be threatened by erosion in subsequent bargaining.

I am a great believer in the collective bargaining system, but if the collective bargaining system alone could eliminate gender-biased pay practices, it would have happened a long time ago.

Do you have faith in the second stage being strictly complaint-based or would you rather that there be some sort of ongoing monitoring, remembering that we are dealing with public employees and it should not be horrendously difficult to see that the gains that are made are not lost thereafter?

Mr. Campbell: I can answer neither question directly, Mr. Gillies. I am being very sincere when I say this. The issue we have brought before this committee is one of how you integrate bargaining rights under the Labour Relations Act, the Crown Employees Collective Bargaining Act, the Hospital Labour Disputes Arbitration Act and others, with legislation requiring that equal value be established. In the face of that, if this legislation will cut across bargaining units, how can any union or any employer retain a free right to bargain wages if the employer will be in violation of the law?

If we are saying that after five years what we have effectively done is spent \$100 million and established a new base and now all the unions are free to bargain, then there is a fatal flaw in this legislation that has to be addressed. The very flaw we are trying to point to is that, basically, in a unionized environment a union has always had the right to set its own priorities when it comes to wages and benefits and everything else. Second, if it is to apply to the unionized sector, we do not think it can possibly operate across bargaining units or bargaining agents. That is the issue we are really trying to bring to this committee today.

Mr. Gillies: I see your point. I think it is very difficult. My personal feeling is that we cannot say or assume that collective bargaining will continue in a completely unfettered way after legislation such as this is put in place, because there will be a caveat. After this legislation is enshrined in law, it will have one caveat; that is, bargaining cannot result in gender-biased or discriminatory settlements. It has an impact on the collective bargaining system.

Ms. Gigantes: If it works.

Mr. Gillies: If it works. It is one I am prepared to accept. The reason I find your concern very real is that there are those of us on this committee who want to expand this legislation to cover the broad public service, which in turn brings in any number of additional bargaining units.

Ms. Baker: It seems to me that this legislation goes beyond simply having an impact on collective bargaining and requiring the parties to bargain with a caveat.



If we can go back to the very simple example, once having achieved pay equity, we then move a year later, once the agreements have expired, to a situation where the various unions are starting to bargain. The first union to the bargaining table reaches a settlement of five per cent. Union 2 says: "No, we want six per cent. We are bigger or more important in your institution and we can make life very miserable for you if you do not give us six or seven per cent." The employer says: "Sorry, we cannot possibly go beyond five per cent, because in one year the relationships between job categories have not changed significantly enough. Union 1 got five per cent; that is what it has to be for all the other unions in this institution."

Any employer who is forced into that position is in a very difficult situation indeed. It is not just a caveat; it is a real stumbling block. That is one of our very major concerns, especially if this expands into other institutions.

The Acting Chairman: I want to thank you for your presentation. You have certainly highlighted very serious issues to be taken into consideration.

Mr. Wright: Thank you very much, Mr. Chairman and members of the committee. We hope our concerns are given some consideration.

15:00

The Acting Chairman: The next submission will be by the Business and Professional Women's Clubs of Ontario; Liz Neville, president. It is exhibit 14. You will have an hour for your presentation and questions.

#### BUSINESS AND PROFESSIONAL WOMEN'S CLUBS OF ONTARIO

Miss Neville: As you see, there is more than one person sitting at the table. We were not sure who could be present this afternoon. I did not submit the other names, but I would like to take this opportunity to introduce Roxanne Shank, of the Toronto Business and Professional Women's Club, on my right, and Carol Lohnes, also of the Toronto club, on my left.

I know you have just received our submission. In spite of that, I am not proposing to read the first part of it entirely. I think the other presenters will take over and perhaps address rather more specifically the positions as written. You will see it is relatively short; much shorter than most briefs we have presented. This is primarily because we have attached the brief we presented to the pay equity consultation panel and have referred to it throughout. I know the committee has had a chance to review our position in that paper and I am presuming you will want to ask us questions on some things we included in that.

To emphasize our background, as you see from the first page of the written presentation, we are a very broad based organization in Ontario, throughout Canada and indeed throughout the world. Our membership involves women in both the public and private sectors, in business and in the professions and at all levels. It would be truer to say we are simply women employed in remunerative employment rather than in any particular sectors of employment.

I want also to emphasize that we are founding members of the Equal Pay Coalition and have been very much a part of the position it will be presenting immediately after our presentation. It might have been easier if we were reversing the situation. In this brief we have not referred to any of the

coalition's positions and we are emphasizing our particular concerns, but I do want to say that we are in total agreement with all the positions that will be presented by the Equal Pay Coalition.

Turning to the substantive part of our brief, which is headed Bill 105: Too Little Too Late, that heading was chosen to express our deep concern that it has taken a year to get to second reading and committee hearings on the bill since it was first promised to be implemented last year at about this time.

Second, at this stage Bill 105, in dealing with pay equity for employees in predominantly female groups of jobs in the limited public service, is totally inadequate to achieve our broader goal, which is to achieve equal pay for work of equal value. Our brief deals with this principle rather than with the details of the bill section by section.

With respect to that, one of our major principles is that it is more than time we had legislation that was comprehensive not only for the extended public sector but also for the private sector. As we see Bill 105 at this stage probably as a model for the extended public and private sectors, we are even more concerned with the lack of comprehensiveness of that bill itself in dealing with the major principle.

Some people may be wondering what we mean by pay equity and equal pay for work of equal value. What is the difference between them? We have used the latter expression since it was introduced, particularly with respect to the green paper the government provided, an excellent paper in itself. We have been using the expressions interchangeably but really only after detailed study of Bill 105, which took a lot of time to study.

Perhaps that is why there were no adverse reactions to the bill in the earlier months. I discovered just recently it came out the day after the first hearing of the consultation panel, and we were all far too much involved with that exercise to study Bill 105 for quite some time. I noted that Mr. Scott referred to the fact that he had not had many adverse comments on this bill, and that may be the reason. In studying the bill more, we have decided there is a very real difference between pay equity as it is being proposed in Bill 105 and equal pay for work of equal value.

The real system in Bill 105 always addresses the question of equal value only after gender predominance is established within the female and male groups. It uses the comparison of equal pay for work of equal value in only a very limited sense between two jobs. We do not agree with the way those two jobs are selected from within the groups, but our major problem is that nowhere is enshrined in the bill the right for a woman--or a man, and I will come to that in a minute--on the basis of her job to be able to say her job is underpaid in relation to the job of a man who is doing another kind of job, regardless of the number of people of her sex in her job or of the opposite sex in the other job.

In saying this, we do not want to deny that pay equity under proper terms of reference has merit. It has a great deal of merit if it is used to apply a remedy very quickly to the gross imbalance. Even the methods used in Bill 105, with some qualification, would not be too bad if the results were achieved at the end of that three months rather than taking an enormously long time to be worked out.

With respect to gender predominance, there is the problem that under



Bill 105 we are enshrining these ratios which, although they can be challenged, nevertheless must always be brought into the question of whether equal value may continue to be assessed. This entirely excludes the individual's right to be dealt with as an individual and not just as part of a group. It is fine as an initial position but not to be used as something which must always be present before equal value can be assessed.

15:10

We also want to refer briefly--it comes into this section of our brief a little out of place--to our concern in the broader public service and in the private sector that there will be some types of employment--some establishments, if you like--where there will be groups that are entirely female-dominated with no male comparison available. A child care worker is the normal one we think of, but someone was bringing to my attention yesterday the possibility of homemakers in homemakers' agencies being another group that could not be compared with any males in that kind of establishment because usually there are none. The most obvious comparison would be janitors. The person concerned was describing to me the difference in rates she has found between janitors in both large and small organizations compared with the average rate for homemakers from homemakers' organizations.

The third principle to which I referred briefly, which we are concerned about and which was described fully in our original brief, is that Bill 105--and we understand it is the government's intention that this bill apply to any office legislation--violates the fundamental standard of convention 100 and all other human rights legislation I know of in that it does not give men the same right to seek redress under the legislation as it does women. We feel it is important to the relationships between men and women at work that not only should those men found to be in the female-dominated jobs have the right to complain but those men who find themselves in low-paying jobs that are not female-dominated should also have the right to complain themselves. I have a feeling I did not explain that well.

We know the redress will apply to men who are in the group of female-dominated jobs that receive compensation, but a man in that group will never be allowed to complain himself that he is underpaid because his job was at one time a female type of job or just because it pays lower than work that he considers of equal value, which happens to be done by a woman.

To sum up these general principles: We feel Bill 105 is a tortuous example of the proactive model; its complexity is enormous, and my colleagues will go into more detail about that. The complaint-based mechanism appears to be there until you realize it is only complaint within gender predominance and within this particular pay equity model. That is not sufficient. What we were talking about as an integrated, proactive and complaint-based model was proactive in the sense of pay equity measures taking place with gender predominance, if you wish, at that stage. In the end, however, after that has been in place for a brief period, there should be a complaints basis which individuals can use.

Having referred to the complexity of the bill, I would like to turn it over to Carol Lohnes to talk about the implications of this complexity.

Ms. Lohnes: To bring us back on track as to who we are and why we are here, our primary objective is to improve the status and promote the interests of business and professional women. To reiterate what Liz said, our members are employed in both the public and private sectors. Our overall goal

is to achieve equal pay for work of equal value and to eliminate the gender-biased wage gap. That is why we are saying Bill 105 is too little and too late. I would like to go into a few more details.

First of all, we feel the structure of Bill 105 is too complex, particularly regarding parts III, IV, V and VI, which refer to the stages of implementation across the organization. We have advocated phasing in the implementation of equal pay with a clearly defined timetable. The limited results achievable by Bill 105 do not justify the complexity of the implementation process.

Agreement to and implementation of a pay equity plan for initial pay adjustments should be achievable in a very short time. Establishment-wide comparison is fundamental to equal pay for work of equal value. Development of any implementation plan may take a little longer in very complex organizations, but we feel a period of two years would seem quite reasonable.

To refer to what Liz was saying, we feel pay equity is only one part of the overall goal of equal pay for work of equal value. The pay equity stage, which is what Bill 105 is referring to, is immediate and in the short run and it should not require a formal job evaluation plan. Any system that equalizes wage rates of comparable female-male jobs should be acceptable. However, in the long run--again getting into the issue of equal pay for work of equal value--the type of bias-free job evaluation system adopted to achieve equal pay for work of equal value should be developed in the context of the particular organization and, in unionized situations, should be negotiated with the bargaining unit.

The implementation schedule for pay adjustments in Bill 105 is too long. The immediate pay adjustments will be going to women at the low end of the pay scale, and we are sure these women will not be using the money for luxuries; in all likelihood, the initial payouts will be turned back into our economy. It is essential that those who need the money most receive it now and that adequate provision be made for funding initial and ongoing pay adjustments, outside of budgets for necessary cost-of-living and normal, negotiated pay increases.

We feel that any pay adjustments made should be retroactive. The women of Ontario have been very patient, despite many years of trying to achieve equal pay for work of equal value. For example, 15 years have passed since Canada's ratification of the International Labour Organization convention 100; one and a half years have passed since the April 1985 election and promises of equal pay for work of equal value; eight months have past since first reading of Bill 105 and, of course, we went through the lengthy consultation in response to the green paper. Pay adjustments retroactive to February 11, 1986, the date of the first reading of the bill, are imperative.

With regard to exclusions, we feel the exclusions spelled out in Bill 105 are totally unacceptable. Equal-pay-for-work-of-equal-value legislation must include all Ontario workers. In particular, we are concerned that GO Temp appears to be an agency that is separate from the Ontario public service; therefore, these employees are excluded from Bill 105. This is another example of inequity in the structure of the work world that impacts negatively on a predominantly female work group.

15:20

Ms. Shank: Thank you for allowing us the opportunity to address our



concerns to you, especially in the nadir of the afternoon when everyone is starting to doze off a little.

With regard to item 12, total compensation, in reference to the attached brief which you received earlier, we consider it important that any definition of "pay" includes total compensation. This would encompass all forms of remuneration. We need the broadest possible definition of "pay."

On the role of the Pay Equity Commission, item 13, we think the amendment to subsections 20(5) and 20(6) to Bill 105 is excellent. We support it. It is essential that the Pay Equity Commission be allowed to increase its role to improve the monitoring powers. It is also essential that employers be required to file an annual report with the commission. In addition, pay equity, or equal pay for work of equal value, is an issue in which education is essential at all levels. We firmly believe the Pay Equity Commission should have adequate resources to improve education to both employees and employers for this to work effectively and as planned.

In regard to subsection 19(3), we do not support this amendment, because it restricts information about a complaint to the employee or the bargaining agency instead of allowing access by any person. We are seriously concerned about this. This is a major flaw because it is important that reasonable access be allowed to any third party who could possibly benefit from the experience of reviewing the information. Again this is part of the education process.

The new requirement to file the results of job audits is also commendable, but these audits, in addition to the annual report referred to before, should also be reasonably accessible to third parties in similar occupational groups who could benefit from them.

Lastly, in regard to reprisals and penalties, at the risk of using a controversial phrase, I am afraid they are a necessary evil, and we just have to face that. A toothless lion is not much of a lion. We are pleased to see that amendment 20a includes definitions in regard to reprisals and a complaint process when the new gender-based compensation practices are in effect. It is equally important, and we strongly believe, that penalties and fines for noncompliance with any part of the legislation be in fact adequate to be a deterrent.

I will turn it back to Liz Neville for our conclusion.

Miss Neville: We have reiterated this and reiterated it: Our goal is equal pay for work of equal value. This includes the elimination of the gender gap, not just pay equity. We do not want complicated and extensive legislation, which will alienate all employers, in both the public and the private sector, still further. We have heard how alienated they are just in the past hour.

We would prefer it if legislation were not necessary. Experience--the long experience we have quoted, which goes back much farther than the experience of any of us at the table and in fact, I think, farther than any of you at the table, since we have lost people like Margaret Campbell from this issue--makes us realize that legislation is necessary.

Our members, as you have heard, are business and professional women. They will have to live with the legislation when it is passed, and many will be responsible for its effective implementation in the public and private

sectors in both large and small organizations. It is doubly and equally important to us as employers and employees that the legislation be workable and realistic and, above all, that it achieve equal pay for work of equal value.

I expect you want to ask us some questions on all of that.

The Acting Chairman: Yes.

Mr. Gillies: Thank you, Miss Neville. That was an excellent presentation, and we thank you for it.

I have a couple of questions. I am going to try to tie together points 3 and 13 in your brief. Just to paraphrase, in point 3 you are basically saying that this bill does not and will not achieve equal pay for work of equal value. It is a move towards pay equity inasmuch as it constitutes a one-time pay adjustment during the proactive phase, followed by a complaints-based procedure that remains in place thereafter. You are saying this will not achieve equal pay for work of equal value. Did I take that correctly?

Miss Neville: Yes. It will not achieve equal pay for work of equal value, because the complaints-based part of it, or any ongoing plan that is required, does not require that any job which is deemed to be underpaid because of the gender of the person involved is not equal to another job, unless it is part of a group that has the proper percentage composition.

Mr. Gillies: All right. I jump then to your point 13. I quite agree with you in terms of the need to improve the monitoring powers of the commission in that subsequent stage; we have in mind an amendment in that area. If you take this bill with beefed-up, ongoing monitoring after the so-called proactive stage and with the power for subsequent adjustment, if it is seen that the gains made in the initial phase are being eroded in terms of having teeth, does that give you a bill that you think is adequate?

Miss Neville: Not if the basic principle of the ongoing requirement is for equal pay for work of equal value, not of just one job in a group of jobs that are female-predominant being comparable with one other job and, at that, the lowest-rated job that can be found in the male-predominant group. The bill is not adequate on that basis.

The provisions that now are being made--and it is very difficult with having only a look at the amendments very briefly last week before we had to sum them up--the amendments for follow-up now look fairly good. I am sure that on reflection we will come back and say we want something else, but for the moment, I would say that is definitely a move in the right direction and appears to be a good start. However, without the basic premise, I cannot say that any follow-up is going to be worth while, because so many people will be excluded from using the complaints process if they can complain only on the basis of whether they belong to a gender-predominant group.

Mr. Gillies: Again I agree with you. Actually, further to your last point, I can almost assure you that wherever you find a deficiency in the bill, I am almost bound to agree with you. That is part of the way things work around here.

Miss Neville: On the other hand, I want to see pay equity implemented very fast.



Mr. Gillies: Our party will be moving an amendment to remove the gender-predominant floors or ceilings, whatever you want to call them, the 60 per cent and 70 per cent. I want to get your reaction, because I informed the minister of this last April. He acted surprised last week when we reminded him of it. His argument is that if you remove the thrust of gender predominance, what you are doing is adjusting wages but not with an eye to eliminating systemic discrimination. How do you react to that? I do not buy it.

Miss Neville: I go back to the point that I made earlier and to the minister when he first talked to us way back in summer 1985, when many of us caught up with the Manitoba and Minnesota legislation for the first time. The concept of using gender predominance for a quick identification is not all bad, nor is even the across-the-board percentage increase of whole groups based on some realization that we do not think needs to be a strict equal value realization across the board. In some jurisdictions, they have even used equalizing the base rates as the first step.

All of that can be useful, but it needs to be dealt with in a very short time frame and then we can go back to what I agree is the longer, more difficult and more complex process of deciding which method of equal value comparison the organization will work with and then what the pay equity authorities will consider adequate to accept.

15:30

Mr. Gillies: Regardless of which system of measurement is put in place, your preference--and I want to be clear on this--is for the comparison of the value of individual jobs, and that the 60 per cent or 70 per cent, or whatever you want to call it, should not be one of the--

Miss Neville: It is only a useful tool in the first place.

Ms. Lohnes: We see pay equity as necessary and immediate, but we see this simply as a short fix to eliminate some problems that are there and we are all aware of. Our concern is that this is taken to represent equal pay for work of equal value.

It is also set up as being the model to go into the broader public sector and the private sector, particularly with gender predominance. If we say 60 per cent, what is to stop organizations from promoting a couple of people or taking a couple of people out of those groups so those jobs are excluded? We simply see this as a quick fix.

Mr. Gillies: Especially when, as you note, the comparison is with the low end of the other categories, which does not seem fair.

Ms. Lohnes: Yes.

Mr. Gillies: The other point I want to raise with you is number 5, the aspect of the bill that discriminates against men. I am so glad you raised that. I think all the men on the committee were afraid to say anything about it until one of your groups came in and raised it.

If my understanding is the same as yours of the bill unamended, as it sits before us, a man working in one of the female-predominant groups does not have power under the legislation to file a complaint because he sees his wages as being inadequate compared to a male-dominated group. I am glad you raised that. You are absolutely correct, as far as I am concerned. I do not see why

that should be. If we are out to achieve employment equity, why would we build a further gender bias into the legislation?

Ms. Lohnes: This bill, if implemented as it stands, covers only a very small group of women. Essentially, it pits other women against women and it pits men against women. I do not believe that will accomplish our goal in the long run.

Mr. Gillies: And it is not necessary. If we take the two ideas you have put in your brief: (1) eliminating the gender predominance yardstick, and (2) just allowing--let us face it; we are looking at low-paid men who, because of the nature of their work, are being discriminated against in the same way that a woman is. Thank goodness, men are increasingly finding their way into what we might call nontraditional jobs for men. We now have male secretaries, male switchboard operators and all these things. We have to recognize that. It is not the main thrust of the legislation, but as a side issue, I find it very compelling.

Miss Neville: It might be acceptable in the pay equity section not to have that right there, but when we come to the full-blown complaints on equal pay for work of equal value, I strongly urge the committee to provide for that circumstance. It is an important point.

Ms. Hart: You expressed your preference for evaluation of individual jobs. Does your view remain the same in the public, expanded public and private sectors? Do you see that as the route you wish to go in all three sectors?

Miss Neville: In the long run, yes.

Ms. Hart: You have said several things that twiggged me to ask this question. Do you see any benefit in having the initial thrust being put between one employer and two unions, or maybe three, as a model for long-term pay equity in all sectors?

Miss Neville: I am sorry. I did not quite understand that.

Ms. Hart: As I understand it, this bill was crafted in the limited public sector to act as a model for the implementation of pay equity in the broader public sector and in the private sector. Because there is one employer and very few unions, it would be relatively easy to come up with a number of different pay equity models, if I can put it that way, within that small group. It is not a small group in terms of number of people, but it is a small group in terms of the number of parties involved in the negotiations. Do you see any benefit in having that instead of opening up the whole thing at once?

Miss Neville: I am not sure I have the thrust of your question. What we tried to say is that--and this is point 7, which Carol addressed--we do not see the need, even in the limited private sector, because it takes so long to have this comparison done within the bargaining unit, even though there is only one major bargaining unit; very few government agencies have more than one bargaining unit.

But to have it first by the bargaining unit, simultaneously for the nonbargaining group and then across the bargaining units, which may or may not exist in most of the limited private sector, and then establishment-wide, one should be able in the pay equity section stage, without necessarily even doing formal job evaluation, to follow the kind of process that Bill 105 puts out across the whole of the organization simply by common sense.



Common sense tells us there should be at least some form of pay equity between those telephone switchboard operators and the parking lot attendants. There are many other jobs that common sense and goodwill between the bargaining agents and the employer--and it does exist if there is a law to inspire a firm answer without having to go to arbitration on each and every one.

Ms. Hart: Let me come at it again. Even granting your point about time periods--let us forget time periods for a moment--once we get to the broader public sector and the private sector, there will be very many tasks to be done to perform the evaluation, even within the female-dominated groups we have in this bill. Would you agree with me on that?

Miss Neville: Yes, in the larger organizations. On the other hand, the larger organizations for the most part already have statistics and systems available to them to identify who is doing what.

Ms. Hart: That is right except, as we heard this morning from York University, the classifications they have now may work against pay equity, if I can put it that way.

Miss Neville: Yes.

Ms. Hart: We may have to go back to round one to come up with new classifications. My point is quite simple; I am just not stating it very well.

Do you see any benefit in having a model in a very contained group that the broader public sector and the private sector can look to when the time comes for pay equity to be achieved in that broader group with so many different classifications to be compared?

Ms. Lohnes: If I understand you correctly, I do not think that would do the trick, because one of the things we have always said we supported was flexible legislation, and if you establish a model, that model simply may not work in the private sector. We have large organizations, a variety of positions, and we have small and medium-sized organizations.

Ms. Hart: That may be true, but at least there will be something to look to with an experience rating, if I can use workers' compensation parlance. The process has actually been gone through and something has been achieved.

Miss Neville: Are you talking about the kind of job evaluation?

Ms. Hart: That is used as one of the aspects of it.

Miss Neville: The kind of measurement system that is used.

Ms. Hart: Yes. Since the bill is so flexible in terms of the route that may be taken by each employer-employee bargaining unit, several will be found at this first stage. All I am asking is, do you not see some benefit for the private sector to quell some of the fears that exist in pay equity at all?

Miss Neville: Quite frankly, I think there is enough experience out there and all sorts of models that people know about and so quickly get to know about, that at this stage of the game, particularly in this past year, maybe the time lag has had some value in the respect that we no longer need the example from the public sector.

15:40

Ms. Hart: Are you suggesting that perhaps we should approach the whole thing at once, public and private sectors, in one omnibus bill; do it once and get it over with?

Miss Neville: At this stage of the game, I do not think there is anything to be lost by going that route.

Ms. Gigantes: I would like to ask you to comment on the thesis of disaster that was raised for us by the board of trade in the presentation just before you. Do you have any comments on the long-run implications for labour-management relations and the risk at which employers will be put?

Ms. Shank: I for one found it very heartening that the board of trade was so personally and deeply concerned about the welfare of the unions involved.

Ms. Gigantes: I found it interesting to note that first-contract legislation had been brought in to ensure that labour and management got together on things.

Mr. Gillies: That eluded me at the time, I must say.

Ms. Gigantes: I thought it might, Phil.

Miss Neville: I think someone from the committee said during the course of that discussion--

Interjection.

Miss Neville: I beg your pardon?

Mr. Mitchell: It is all right.

Ms. Gigantes: He does not have a good sense of humour.

Mr. Mitchell: No. I do not see humour in some things.

Miss Neville: I cannot remember my exact train of thought, but what I was getting at was that it has been equally hard for unions, particularly the big, male-dominated unions, to be able to propose equal pay for work of equal value settlements and to be in a position to bargain for pay equity. Some of them will continue to have that difficulty, just as some managements will continue to have the difficulty they are having, seeing it as a viable thing to entertain for their businesses.

Both sides have been faced with a great deal of difficulty. What the legislation does for me, as the equal opportunity legislation did almost 17 years ago, is to provide a ground on which they could both be against the government, if you like, whatever government it is, for introducing this restriction into their bargaining.

I think it is another of those things. According to employers, and according to some unions too, equal pay is going to be the end of our Ontario economy, the end of the world's economy, if it is introduced. This is just not going to happen, but it cannot be resolved overnight. Obviously, it is a different relationship to the wage packet that people are going to have to



face in the long run, the different buying power it gives people, the different place in the organization it gives by earning more money and earning more money in relation to other people.

Over the course of time it is going to take to work itself through the system--and that is about 10 years, even if you start with the quicker fix we are recommending--I still do not think it is going to be the end of labour relations or anything else.

The Acting Chairman: Are there any other questions?

Following up on that question from the last presentation, in your opinion, once the first stage is passed, does market demand or bargaining strength disappear as a factor in determining wages?

Miss Neville: I honestly do not think so. It was Mr. Mitchell who was putting forward the scenario that you have to do it the same for everybody once you have compared across groups and so on. To understand quite how that will work out is tricky. Frankly, if it does work out that the highest settlements trickle down to the weaker group of employees, who by definition are mainly women, then I can only say, so be it.

Mr. Mitchell: I should make it clear. I quite support the position you are taking that there has to be equal pay for work of equal value. I do not have any hangups with that. In the questions that were being raised, I took facetiously, I must admit, the comment you made about the board of trade being concerned about unions. I frankly do not know whether they are concerned about unions or the employers.

The fact of the matter is, I see a problem there. There are not going to be any inhibitions against the bargaining process as long as they are going to be able to bargain on the basis of a percentage or a flat line. If they are going to be allowed to continue to bargain on a percentage, then I see that gap coming back and growing again only because of the nature of the groups and so on that the union is bargaining for. I may be wrong, and I hope I am wrong, but I see it as a problem.

Miss Neville: With respect, I know we cannot expect Ontario to set the world to rights, but on the other hand the world has had at least 46 years to address this issue, to try to get wages for women's jobs on a more viable and equitable level. We in Canada are not in a happy position with our 64 per cent wage gap when New Zealand has a 12 per cent wage gap, which is what I heard from our members when I was there in 1985. They are well ahead of the game, I must admit.

If the world cannot resolve this--I know this is very philosophical, but I think we are so nearly there that not being willing to take the plunge and to be still raising these spectres of wholesale economic disarray and disarray of labour relations is just not taking the risk to take that leap.

Mr. Mitchell: I do not suggest for a moment that you not take the risk. That is not behind my comment. The Ministry of Labour person said the employer will be at fault if this is what happens. I am saying, how can you say that? If we are going to let the process go, there may be pitfalls; but as you say, take the risk. Let us not start saying already that there are going to be fingers pointed at people.

Miss Neville: Perhaps someone can remind me. I was surprised to find out as matter of fact--is there no onus on the union?

Ms. Gigantes: Certainly there is. Section 26 states, "any employee or employees of the employer may file a complaint." It is section 27 that states "may order an employer or bargaining agent...."

Miss Neville: In our human rights legislation and in our Employment Standards Act, the complaint can be against the union as well as the employer.

Ms. Shank: Something we should bear in mind here is a sense of perspective. I am a manager with a private insurance company, and as such I am very sensitive to the fact that everyone, not least private industry, is concerned about the cost involved. A friend of mine said, "You women just want a larger piece of the pie." Something that is being forgotten here is that women do bring something to the party. We are going to make the pie bigger. As far as I am concerned, the sooner we implement equal pay for work of equal value, the better for Ontario.

The Acting Chairman: Are there any other questions? Thank you very much for your brief. We appreciate your input into this matter.

The next presentation will be made by the Equal Pay Coalition. The coalition's brief is number 13. You may proceed with your presentation. You know you have an hour for the presentation and questions from the committee, which I am sure will be very interested in hearing your brief.

15:50

#### EQUAL PAY COALITION

Ms. Cornish: Good afternoon. My name is Mary Cornish. With me today is Lynn Spink, who is with the Canadian Union of Public Employees. We will be acting as the spokespersons for the Equal Pay Coalition this afternoon.

The brief, as you can see, is fairly detailed. What we are going to try to do in the first half hour is to highlight for you the contents of the brief, and then from there we can deal with any questions which the committee has concerning the brief.

You will see from the beginning of the brief, if I can show you how it is made up, that there is a summary of the recommendations on pages 2 to 7. How I will start is to give a brief introduction. Then Ms. Spink is going to be dealing with various of the major issues that face us in terms of the legislation. I will be completing it by going through some of the more detailed provisions of the bill.

The coalition, as some of you who have been familiar with this issue over many years may know, is a major lobby group that has been working in Ontario since 1976 to achieve equal pay for work of equal value through legislation and collective bargaining. The coalition represents a very broad consensus of opinion in the province concerning the issue of equal pay for work of equal value, particularly concerning the implementation issues that are before us in terms of the structure of Bill 105.

I would like to say initially that there are two thrusts to the response we would like to give to you today. We want to make it very clear that we are very seriously concerned about the fact that there is an absence of private sector legislation; we are discussing the public sector legislation in the absence of that.



The coalition has in its membership very strong representation from private sector women who are extremely concerned that they are being made into second-class citizens by the way in which the government has dealt with the issue of equal value in relation to their wages.

While we will be focusing on exactly how Bill 105 should be amended, we want to make it very clear that we oppose the division of the equal value legislation into public and private sector dimensions. We remind the committee that this division was not of the making of anybody out in the Ontario scene but rather was a response that the government put forward when it came into power. There had not been suggestions before that of the division of private and public sectors.

Essentially, we see that equal value legislation is a basic human rights standard; in fact, the International Labour Organization regards equal value legislation as a category 1, basic human rights standard of which there are six in the world. Nowhere in any of those conventions or recommendations will you find an indication that there should be any different treatment for private or public sector workers. This is particularly true and is why we raise it.

The concern we have had recently, again, is that the government has basically indicated two reasons for the division. One of them is that the private sector has to retain its competitive edge. We are very concerned that private sector women, the women who need this legislation the most and the people to whom it means the bringing home of more money for basics such as rent and food, are again being ignored. They are not people who can afford to have more rounds of consultation to sort out whether there will be any legislation for them.

Furthermore, in terms of the competitive edge, it suggests that somehow those people who are in that situation will have to accept some form of devaluing of their wages on the basis of their sex for the sake of a healthy economy. That is something the coalition rejects as a notion, that if the women in this province are in the private sector, in what is regarded as a place where they should be competitive, they should accept something less than fair wages.

We remind the committee that any kinds of differences with respect to the public and private sectors could have been dealt with in terms of differences within one omnibus bill. We also urge the committee to make it clear that the government should immediately table strong and effective legislation in the private sector. Every day the government stalls on doing that essentially means another day when the women of this province continue to have discriminatory wages.

I will hand the podium over for the moment to Ms. Spink, who will deal with several of the issues that basically start at page 11 of the brief.

Ms. Spink: One way of analysing the bill is to look at the gaps in the bill itself and to ask a series of questions. First, some of the things the bill does not do: The bill does not cover 98 per cent of the women who work in Ontario; it does not cover the women who work in the private sector, as Mary has pointed out, and it does not cover the women who work in the public sector as it is generally defined.

What does it do for the women who come within the realm of the narrowly defined public service in the bill? It does not do something for all those women; it excludes specific categories of women in the Ontario public service.

What does it do for the people who are eligible, who are included? It does not provide them with equal pay for work of equal value. It does something else. It does not make it unlawful to pay unequal wages. It does not provide for pay adjustments for women until some time far off in the future.

I direct you to page 11 of our brief where our first recommendation is that the government immediately table strong and effective equal value legislation in the private sector, so we would deal with two bills rather than one bill that covers only a tiny portion of the women in Ontario.

The coalition feels that Bill 105 in its present form falls far below the legislative proposals we put forward last fall and that it does not meet the requirements of the International Labour Organization which enshrine equal value protection as one of the basic human rights standards for all workers.

In our green paper response, we emphasized that the choice of the implementation model for equal pay is a crucial one. Some models eliminate large numbers of women from their application and give those who are covered what is only a partial remedy. Bill 105 has done just that. It will require massive amendments to meet an acceptable standard.

The government has chosen to adopt a proactive approach without an equal value mandate. The present bill uses complex procedures, restricted definitions, exclusions and prolonged implementation periods to water down the principle of equal pay for work of equal value so that it is not recognizable as such.

To understand our opposition to the structure of Bill 105, it is necessary to understand the emerging distinction between the terms "pay equity" and "equal pay for work of equal value." I have noted at least two other organizations that have addressed you while I have been here that have described or analysed that distinction for you. It is a very important one.

Pay equity is a method of reducing the wage discrimination that women face as a result of the systemic undervaluing of their jobs. Equal pay for work of equal value is the way of eliminating it altogether. During the past two years, the terms have been interchangeable in use. The government has chosen to emphasize the term "pay equity" as if it were identical to "equal pay for work of equal value." The terms refer to concepts that are quite distinct.

16:00

The principle of equal pay for work of equal value is a fundamental international labour standard. It requires that men and women be paid equally for work of equal value. This principle has been implemented federally and in Quebec through laws that rely on enforcement bodies which respond to workers' complaints. Pay equity, on the other hand, is a term applied to legislation that has a proactive orientation. It seeks to reduce or diminish the pay gap through proactive programs but it does not meet the equal value standard.

The problem with the government's approach on Bill 105 is that it is using pay equity as an end in itself, full stop, rather than as the means to equal pay for work of equal value. Pay equity as proposed in Bill 105 diminishes, but does not eliminate, wage discrimination because of undervaluing. That is for only some but not for all of those people covered by Bill 105. To be acceptable, the bill must also set out a standard of equal pay for work of equal value to end discrimination. The difference in the



approaches is a vital one. Both approaches should be applied as part of a single piece of legislation.

We are making two recommendations relating to this. Bill 105 should be amended to redesign "pay equity plan" as a means of implementing equal pay for work of equal value in the establishment; that is, a proactive program to achieve equal pay between men's and women's jobs in the same establishment where such jobs are of equivalent value.

Related to that, we would change the title of Bill 105 to read, An Act to provide Equal Pay for Work of Equal Value in the Public Sector, or, the short name, the Public Sector Equal Pay for Work of Equal Value Act.

Consistent with the watered-down pay equity approach, nowhere in Bill 105 does it say it is unlawful for employers to fail to achieve the equal value standard in their payment of wages. Although such a provision is required by the ILO convention and is contained in federal and Quebec legislation, Ontario workers will not have that protection.

It is a fundamental cornerstone of our proposals that the government's commitment to equal value must be reflected by the inclusion in the legislation of a strong statement of principles that achieving pay equity for women through requiring employers to implement equal pay for work of equal value is a fundamental and paramount objective of Ontario's society and that the failure of employers to pay comparable wages is unlawful.

The only way to end wage discrimination is to make the failure to comply with the equal value standard an unlawful employment practice. This gives the women of the province a tool to use for improving their conditions.

This brings us to our fourth recommendation. Bill 105 must contain a strong section stating that achieving pay equity for women through the implementation of equal pay for work of equal value is a fundamental and paramount objective of Ontario's society and that the failure of employers to pay comparable wages is unlawful.

Given the government's intransigence on legislating separately for the private and public sectors, the coalition has maintained from the outset that any public sector legislation must cover all those workers who were subject to wage restraint legislation in 1983. If these employees can be considered part of the provincial administration for the purposes of controlling their wages, then fairness requires that they be considered part of that administration for the purpose of the government leading the way on progressive wage policies. Aside from the concept of fairness, which dictates their inclusion, all public sector employers share a general community of interest in that they usually receive a substantial portion of their funding from the government which, when the time comes, can transfer funds to them to implement equal pay adjustments.

The fifth recommendation is that Bill 105 be extended to cover all public sector workers who were covered by the 1983 wage restraint legislation. I ask you to turn to page 25 for a related recommendation, recommendation 13: Bill 105 should make it clear that all employers, including those who have nonunionized employees, must establish proactive plans to identify the pay inequities, set aside three per cent of payroll and pay it out to those who are doing women's work.

Our next amendment may help to clarify some of the questions that were raised in the board of trade presentation earlier this afternoon. We are

proposing that equal pay for work of equal value be entrenched in the collective bargaining climate and that Bill 105 should provide that the various collective bargaining statutes in the public sector should be amended to require specifically that all collective agreements include clauses requiring the employer and union to negotiate proactive steps to attain the equal value standard. The Labour Relations Act already contains similar provisions that require a collective agreement to include a minimum grievance procedure and provisions that nullify a collective agreement.

I turn now to the question of exclusions on page 19. Bill 105 outlines numerous exclusions, including trainees, students, rehabilitation positions, temporary labour shortage, GO Temps and casuals. These exclusions are completely unacceptable to us, either in this bill as it stands or in a bill that is extended to include the broader public sector. Equal pay for work of equal value should be a right of all Ontario workers, not only those who work full-time at regular jobs.

We are asking that the bill be amended in our recommendation 7 to delete the section outlining exclusions. We remind you that 35 per cent of the female work force in Ontario works part-time and that 72 per cent of part-time workers in Ontario are women. If we are going to allow an exclusion, such as one for casuals or temporaries, it will disfranchise a significant majority of women in this province.

Finally, on page 29, under the present wording of the bill, employers will not have to make the initial pay equity adjustments until approximately two years after the bill is proclaimed; the final adjustments under the bill may take up to six years. It is absolutely unreasonable for working women to wait several more years before they see any money in their pockets. The bill should be amended to require employers to implement a rough approximation of justice at the outset.

While the coalition acknowledges that an employer and a union may require some time to identify the precise nature of all the pay equity adjustments required, it does not take any time at all to see that substantial wage adjustments for many jobs will be necessary and that part of those adjustments could be paid right away. The coalition therefore proposes that Bill 105 provide for an immediate rough justice, an initial justice pay adjustment for workers in lower-paid women's jobs.

Where there is a union, the union and the employer would be required to negotiate and agree on a method for an immediate pay adjustment to all affected workers. If there is no union, the employer would be required to calculate the approximate appropriate payout subject to the rights of an employee to complain to the commission. These rough justice payments would be made within three months after the proclamation date, and the payout would take the form of a lump sum payment that would increase the yearly salary or, where appropriate, hourly wages of the recipient.

The funds for this pay adjustment would come from the pay equity fund, which is required to be financed at a rate of three per cent of the total establishment payroll per year since the first reading of the bill. This is not at all an unusual approach. In Los Angeles, the route that was taken was that entry-level rates, base rates, were equalized at the outset; in New Jersey, there was a payout of \$7 million immediately for workers in lower-ranked jobs; and in New Mexico, the state increased the rates of all the lowest job classifications by 20 per cent at the beginning of its pay equity program.



16:10

I also point out that this is a route suggested by the options paper put out by the Ministry of Labour on November 19, 1985, and one of the suggestions with respect to phasing is that, given the possibility that the formal pay adjustments arising out of a pay equity plan may not commence for some time while the details of the plan are being developed, it may be desirable to give consideration to introducing some interim pay adjustment measures in the meantime based on broad pay equity principles. That is exactly what our recommendation 18 is asking you to do.

For the rest of the presentation, Mary will be highlighting some of the other recommendations in our brief.

Ms. Cornish: I am going to start again at gender predominance, which is at page 16 of the brief. This involves the fairly fundamental disagreement we have with the legislation concerning the arbitrary, fixed numerical cutoff to determine coverage under the legislation. This is particularly evident if you just look at the title of the bill, which talks about and covers only women in predominantly female jobs.

You will see throughout our brief that we have attempted to use the terms "women's work" and "men's work" to categorize the types of work we are dealing with as opposed to the terms "predominantly female" or "predominantly male" jobs. It is a real problem for many people who may be involved in jobs where, because of the uniqueness of their jobs or the fact that the employer may have had certain men move into the jobs, there is a historical pattern in which the job is currently devalued because of its association with women's work. It would be a big mistake for the government to put forward a piece of legislation that had a numerical cutoff such as 60 or 70 per cent.

Part of the reason we got into this problem in the association with the term "predominantly female jobs" is that historically that type of use of gender-predominant groups was a methodology to assist in the quick-fix programs of pay adjustment. In other words, if you were trying to do something quickly in various methods that were adopted, there was an attempt to sort out a quick way of assessing what were male jobs and what were female jobs. What it has turned into, however, is a way in which we look at defining whether a job is undervalued: whether there is a certain percentage of women or men in the job. This is something that fundamentally violates the principles of international labour standards on this issue.

The international labour standards do not say women can apply when they are in predominantly female types of jobs. They say you can apply if your job has been undervalued because of your sex, and we keep coming back to that issue. The issue is whether the work is undervalued because of its association with women's work, and that is the issue we have to deal with. Whether some party or bargaining agents may themselves wish to use gender predominance as a methodology to assist in sorting out how they approach the problem is one matter, but to entrench it in the legislation in a way that basically cuts out large numbers of women is another one completely.

Our worries about this, which resulted in our legislative proposals on this last October, became very clear when that was precisely what the government did. It brought in a piece of legislation that eliminated sectors of women in the civil service by using it as a cutoff. That is the concern we have, and it is a concern that has played itself out.

There is another problem where you can see that it comes in. For example, you can have men in higher rankings of groups of jobs, and even though, as a result of using those arbitrary numbers, the entire group of jobs is no longer female-dominated because there may be more men at the top, it may be that the women at the bottom are receiving wages that are based on their association with women's work. Alternatively, it may work the other way, that men may fall into a situation where there are more men in this situation, and therefore they cannot complain, even though their work has been devalued because of this association with women's work.

With this issue and with many other issues, our concern is not just for its implementation in this particular bill; our concern is that this bill will be considered a model and will be considered the most the government is prepared to do itself. The private sector businesses will be looking at it to see what the government is prepared to do, and there can be some assumption they may not do any more themselves or require business to do any more than they will do.

It is very important that the government and this committee look at these issues and their wider ramifications for the entire sector. It is our recommendation that during the proactive stage, there should be a flexible test based on a criterion of whether a job has been devalued because of its association with women's work. This would require looking at a range of factors, including historical patterns and traditional sex stereotyping.

In the second part, after the proactive stage, there would be no requirement to look at gender predominance at all to file a complaint. I remind the committee that if the federal government, in the application of this legislation, had used gender predominance formulas, many of the settlements that took place federally would not have gone through because they would not have met the gender predominance guidelines.

The next issue is allowing male complaints of gender-based discrimination. The present bill does not allow male complaints. It is our position that as it is a basic human rights standard which applies to both men and women, it is fundamental to us that we regard it as important that both men and women be allowed to complain.

The next major issue we have with the bill is found on page 20 of the brief. It deals with the bill's approach to job comparison and devaluation.

It is our view that a much more flexible structure is required to deal with the issue of comparing jobs and finding out where the necessary pay adjustments are. The present bill is unnecessarily complicated and prolongs the process of ascertaining where the pay inequities lie. We regard it as an unwarranted and unnecessary intrusion into the bargaining rights of the unions involved, particularly the Ontario Public Service Employees Union, which in the way the bill is currently formulated represents the largest number of workers who would be affected by the bill.

Again it has been our position since the very beginning that in the structure that is set up whereby the employers and unions will negotiate, they must be given flexibility to adopt a comparison structure that will work to meet the needs of their particular organization. In this respect, we probably are on the same wavelength as employers to some extent in that we do not wish to see any unnecessary intrusion into how jobs are evaluated. We regard having various phasing of the different parts, having first bargaining unit plans and then going establishment-wide as things that can be negotiated between the bargaining parties but not as things that should be mandated into the bill.



The coalition's position is that as long as the goal of the pay equity plan is to meet the equal value standard and there is a time limit to achieve that standard, it does not matter how the goal is reached, as long as it is clear where you are going and that the parties are required and have a duty to bargain to get there. It would be in the best interests of promoting free collective bargaining that there should be as little intrusion as possible.

We are concerned with the present proposals, particularly in view of the fact that a very rigid mechanism is set up for job comparison, which appears to mandate a comprehensive job evaluation plan. If you read those sections plus subsection 10(2) of the bill, which provides that the plan prevails over the collective agreement, there is a real concern that the general wage bargaining will be interfered with and that the employer might take advantage of that legislation to reduce the bargaining power of the union.

16:20

It is also clear that different areas may require different approaches. Certainly in the experience of many unions that is true, depending on whether you have multiple bargaining units, whether you have bargaining units that may have similar kinds of bargaining structures or types or whether they are mostly clerical. All these things require a different approach.

In addition, we are concerned that the choice of job comparisons set out in the bill is at various points an attempt to reduce the amount of payouts made to women. If you look at the whole notion that you pick a representative job level for women's jobs and compare only that representative job level, you already have the restriction of the numerical cutoff even to ascertain which group of jobs you are looking at. From there, although you are looking at only the representative job level for women and you look at only that one grouping, you search to find all possible comparisons for the male job level.

The only conclusion you can reach as to why they are doing that is that they are looking for the lowest. In other words, they are looking for the cheapest way out, of paying women the least amount possible, by finding the lowest-rated male job that has a comparison to the female job. The legislation makes it clear it is the lowest male comparable we are looking at.

We object to this provision, and again it is not a provision consistent with international labour standards. It is not the way the federal legislation has been implemented. A woman has been entitled to compare her work with that of a male job which is comparable. She is not required to choose the lowest job. We are concerned that some of the structures throughout the bill are aimed at finding the cheapest quick fix rather than giving women their full measure of justice.

We are also concerned with the timing for the comparison structure that is set up. While we recognize that in a proactive program there may be a requirement to take some time to identify precise pay adjustments, we do not feel it will take approximately six years, which is what is set up in the present bill. Accordingly, we feel the identification and payment process could be collapsed into a 21-month period, with the first three months set aside to develop a plan and the subsequent 21 months to implement and make out the adjustments. That would be the end of the proactive phase.

We are making recommendations to that effect and to ensure that the mechanics of that implementation are left to the employer and the union concerned, subject to the approval of the commission, and where there is not a union, done by the employer first. Perhaps I can deal with that issue now.

There is a real concern about what to do with the issue of nonunionized employees in this situation. It is certainly a tidier situation when you have the employees unionized, because you have a collective bargaining agent that can bargain on their behalf. The coalition has given a lot of thought to the issue of how to protect the interests of the nonunionized employees. In Manitoba, they have put forward a situation where they have elected employee representatives. There is that kind of setup in the present Occupational Health and Safety Act under which you have health and safety committees.

The experience of the member groups of the coalition is that, particularly under the Occupational Health and Safety Act, in nonunionized work places those kinds of committees tend to be dominated by management. We are concerned that if that kind of structure were set up here and you had employee representatives on a committee negotiating with their employer, you would be setting up a structure that would lend credence to an end result that was not warranted, because there was not that kind of even bargaining power between the two parties.

Accordingly, although with some reluctance, we do favour an employer-initiated plan where there are nonorganized employees, subject to certain protections that we see should be put in to ensure that the employees have as much power as they can in that situation. The first one would be that any of the employer plans are subject to the approval of the commission. The second situation is that the employees must have access to the relevant job data information. You will see in our recommendations on that issue we find that Bill 105, even with the amendments being proposed to it, still does not provide enough information early on to employees. Our position is that employees should be able to get information on job descriptions and salary scales, all the documents necessary for them to determine whether the pay structure is fair and how it should be dealt with.

That information should be retrievable directly from the employer. We note the amendments provide that you go to the commission. In my view and in my experience of dealing with government agencies, this commission will have a lot to do very quickly. If we leave to the commission the paper war of what documents must be retrieved, in the sense that every employee has to apply to the commission and the commission presumably has to ask the employer for them, we will be dealing with arguments with the employer about whether to retrieve them. It seems to us all those requests should initially go to the employer, and only if there is a problem should the commission be involved in ordering the information to be given.

If employees have that kind of access to job data information, an aspect that is crucial to making the system work, if they have strong complaint mechanisms--I will deal more with that issue as well--and if there are sufficient resources put forward to nonunionized employees--we are suggesting things such as independent pay equity legal clinics to provide some kind of independent help to nonorganized employees in dealing with their employers about whether the plans and the payments are appropriate--we need the commission to have widespread monitoring powers. We also need there to be initiation of third-party complaints by the commission and we need the section dealing with nonreprisals. If that structure is set up, we think there will be a much better chance for the protection of those employees than there would be with the joint committee structure.

Looking again to the issue of the rights of employees and their unions to participate in pay equity negotiations, we are concerned that the present structure appears to say in the bill that when you get to the final stage you



are merely consulting with the bargaining agent about what is going to occur. We wish to make it very clear that throughout the pay equity negotiations, whenever a union membership is involved in those issues the union has to have the right to negotiate and to bargain concerning that matter.

If you turn to page 27, I want to deal with the issue of retroactivity. That issue becomes quite clear when you look at it from the perspective of how long we have taken to get to where we are. Bill 105 basically provides for no retroactivity except in extremely limited circumstances. It is our view, and we have made this clear over the years, that the time has ended for women to continue to fund these kinds of delays.

If you look at it logically, what people are saying now is that it may take some time to identify pay adjustments. We recognize it may take some time, but that does not mean the employers should not pay the money now. All it means is there may need to be some delay before the entire amount of money owing is known and exactly to whom it should be paid. Once that is clear, there is no logical reason employees cannot receive the money back to when we are suggesting, February 1986, when first reading of this bill took place. The only argument against that goes back to an issue of cost. The present bill makes it clear that the government is not prepared to accept paying out those wages until some time in the future. It is our position that if we are now making a choice between who can bear the burden of these unfair wages and the payment of them, it is clear from an equity point of view that it is now time to side with employees. While there may be some time to wait to make the full adjustment, there can be retroactivity made at that point back to February 11, 1986.

16:30

The next issue deals with the pay equity fund, which is related to the issue of retroactivity. Again, if we look at the bill, we see that we have this concept of one per cent of payroll. Some people have the notion that somehow this is a concept that is related to how much discrimination there is or that there is some scientific identification of it.

Essentially, the concept of percentage of payroll is a budgeting technique to defer the payment of the money to women over a period. That is what we are talking about. Instead of the legislation baldly saying "We will not pay all the discrimination now," it says "We will pay only to the extent of one per cent of payroll." We have to look at whether that is adequate funding. It is argued that it is not adequate and that it will result in taking many years for women to get their full amount of payment.

Under international labour standards, there is no restriction in the legislation about the fact that employers have to pay only a certain amount of money per year to women when they find discriminatory wages. It is a blanket requirement that member countries are to ensure that women are paid fair wages, not over a period of years but that they are paid fair wages.

We support the notion of three per cent of payroll that would accumulate starting from February 11, 1986, backdating. Given that employers have clearly had notice that there will be equal value legislation, particularly for public sector employees, we are saying the public sector employers and the government should be funding these public sector payments. If the government was being straight with the electorate when it said it was prepared to legislate in this way, it surely must have started to budget and has been budgeting through the past years to pay for it. Accordingly, some of those initial rough justice

payments could be funded out of the three per cent of payroll that will be deemed to be accumulating since February 1986.

In addition, we are concerned that the present structure of the bill appears to suggest the percentage of payroll accumulates only for the bargaining unit concerned as opposed to the entire establishment. Basically, that would mean the lowest-paid bargaining unit has the lowest pay equity fund and the highest-paid unit, the management unit for example, has the highest pay equity fund to draw on. Accordingly, we ask that it be amended to ensure there is an establishment-wide pay equity fund that could be drawn upon to deal with the total pay equity adjustment.

I have dealt with the issue of access to job comparison information, which is found on page 32 of the brief. You will see we have indicated that there should be a requirement to post the pay equity plans as well, which I understand is part of the new amendment.

In terms of the Pay Equity Commission and tribunal, on page 33, we are concerned that the commission be given wider powers to investigate and to monitor. Particularly, we are concerned that there should be a separate tribunal that will deal with the appeals to ensure the fairness of the process as it is set up. We have a later recommendation to make it clear in the statute that there is a right to a hearing. In terms of natural justice requirements, there will be some problem with having the commission as both the active initiator and the fighter of complaints. That will have to be looked at. The process we have suggested to deal with that issue is to have an appeal tribunal as well as a commission.

In addition, we have a very strong recommendation dealing with the fundamental complaint procedure. As Lynn indicated, the present bill does not provide for the equal value standard or for failure to meet that standard to be unlawful. We believe there must be a basic complaint procedure that will provide this kind of basic safety net for women so that every woman or man in this province who is in a situation where there is gender bias should be able to complain. The proactive program, as Lynn indicated, is not an end in itself but is really a way of trying to get at equal value as quickly as we can. We recognize that if you have a proactive program, you are going to have to have some adjustment to the kind of complaint system you would have federally when you have a single type of complaint statute.

We recognize and have distinguished between pay equity complaints and equal value complaints. The pay equity complaints would be those that could be taken during the time of the proactive program and the equal value complaints are those that could be taken by anybody once the proactive phase had ended. It is essential, in order to ensure that equal value is actually reached, that at the end of the proactive program there be a continuing obligation on employers to provide equal value.

The other issue is that of enforcement, at page 36. The present statute has a very weak enforcement mechanism. Anybody who is at all familiar with attempting to file a labour decision with the Supreme Court knows this is a fairly technical, laborious process that usually results in a lack of success if anything other than a very specific order has been made. Nowhere is it made an offence to pay women unfairly. Even the Labour Relations Act has a provision to file the decision of the board with the Supreme Court. It also has an offence section that makes it clear that if you violate the act, you can be subject to those kinds of sanctions.



It is our position that the time has ended for employers to be placed in a situation where they are not facing serious consequences if they do not pay women fairly. It is also clear that employers understand, by such things as whether or not legislation contains offence sections, whether the government is really serious about pursuing something.

If you look at the spills bill and at those people who were affected by it, the government made it clear that there would be heavy penalties. The Environmental Protection Act, spills bill section, talked about fines that ranged quite high. They were daily fines. It made it clear that the government had some kind of priority to deal with that issue. If you compare that with our situation, where we have a very weak enforcement mechanism, that sends a message to employers and I think it sends the wrong message.

It is the coalition's view that there should be an offence section to the act and that it should provide for substantial fines for noncompliance. This is particularly true when you are dealing with a monetary liability on the part of employers. As long as they can defer it, they save money. If there are no real monetary consequences to them of deferring it, you will find it will encourage noncompliance.

In addition, we think there should be a strong reprisal section. We notice there is an amendment that put forward a reprisal section, but we have indicated in our provisions that this kind of reprisal section must, first of all, in addition have a provision such as that in section 89 of the Labour Relations Act, which shifts the onus to the employer to show that an employer action was not tainted by an improper motive if there has been some reprisal against an employee who has attempted to exercise his rights under the act. That is generally regarded in the labour relations community as a fundamental requirement in order to have some kind of fairness in that system where somebody has been penalized.

As well, there must be serious penalties when somebody is engaged in that kind of reprisal action.

Finally, there must be some speedy mechanism in the legislation by which, if somebody has been penalized or fired, there is power in the appeal tribunal to reinstate that person quickly. Those protections are not found in the legislation as it stands.

16:40

Finally, as you look at our comments as a whole, it is our view that the present bill is a false symbol of equal pay for women because many working women are denied access to the bill. It does not provide women with a full and fair measure of justice. It provides a very bad example to the private sector of what it is going to be required to do. Accordingly, the coalition is asking that these very major amendments to the bill be put forward so that it will meet the basic human rights standards Ontario is already obligated to comply with by international treaties. Those are our responses.

The Acting Chairman: Thank you for a thorough and incisive presentation.

Ms. Gigantes: Thank you for the brief. So that we can understand one section--there are a few sections I would like to ask about--that deals with your model for the implementation, essentially you are saying you will accept the notion of a pay equity plan as one way to address quickly the need for

payout to women. You would like to see that done after a three-month planning period, say in month four, and beyond that you see another 18 months to achieve it through a combined method of a plan followed by an equal value complaint mechanism.

Ms. Cornish: Yes.

Ms. Gigantes: Essentially, you are talking about 21 months to the end of the plan.

Ms. Cornish: The purpose of the plan would be to achieve equal value by the end of the 21 months. The plan would take that period of time to get you to equal value by the end of it. At the end of the 21 months, any person can complain that she does not have wages that meet that standard, but in the initial process complaints about that would not hold up the negotiations between the employer and the union. That is one of the concerns about a proactive plan. While you ensure the rights of people to complain, you also want things to move in a fairly quick way. That is the way we have attempted to weigh and compromise on the issue.

Ms. Gigantes: You think within a three-month period it would be quite feasible for employers and employees in the broad public sector in Ontario to come up with a plan, first, for quick payout based on three per cent of payroll, and second, to have a plan for 21 months that would accomplish the goal.

Ms. Cornish: You would develop the plan. You would then have to apply the plan and implement it in 21 months. You would not be applying and implementing it in the first three.

Ms. Gigantes: I understand, but you would be implementing a quick payout at four months.

Ms. Cornish: That is right.

Ms. Gigantes: You would establish that by the plan, however you decided you were going to do that.

Ms. Cornish: Yes.

Ms. Gigantes: Good.

In regard to the payroll, I was concerned, as are you, that the bill seems to section off payrolls. There is a payroll for an organized group and a payroll for an unorganized group and so on. I was assured by Dr. McAllister the other day that I was misunderstanding it, that when you get to the sixth level of the rounds of the comprehensive pay equity plan, you are dealing with the total payroll. You would just get away from that.

Ms. Cornish: Exactly. We would not have those. When you are paying it out in the first 21 months, you are talking about paying out the percentage of the entire payroll.

Ms. Gigantes: Right.

Ms. Cornish: The union and the employer may decide they are going to take the percentage of the payroll in the first round and direct it initially to the lowest-paid people over the period of time.



Ms. Gigantes: I go back to the points you raised about your concern as to how collective bargaining and the establishment of an agreed-upon plan are going to work together. We had some discussion about this area this morning with representatives of the staff of York University. We also had a lot of discussion among committee members on the question. I assume you are concerned about subsection 10(2) in particular.

Ms. Cornish: Yes.

Ms. Gigantes: Can you take a few moments to spell out that concern again? It has seemed to me, as I said in our discussions this morning, we have somehow to separate the notion of adjustments and negotiations around equal pay from collective bargaining.

Ms. Cornish: The present bill does not say that, for one thing, and that is the concern various unions have. In addition, it says it prevails over the collective agreement.

What would assist people is, first, for the bill to make it clear that pay equity bargaining is separate from wage bargaining and does not prevail over it in the sense that it would somehow be affected. I think the concern people have generally is that what will happen is they will not get any general wage increases because there is going to be this way in which pay equity becomes the only adjustment that happens. That is a real concern people have and they want to make it clear.

I did not emphasize it in the presentation, but I made it clear that male wages should not be affected in that way, by not giving increases to them. In addition, we want to make it clear that wage bargaining is separate and an employer continues to have that obligation and cannot always respond by saying, "I have to make pay equity adjustments here, so this ties my hands totally in relation to the general wage bargaining." The concern people have is that employers will take advantage of it.

Ms. Gigantes: There are sections of the bill that say male wages shall not be reduced and the process is separate. However, it seems to me people are hung up about subsection 10(2). Is it perhaps the word "prevails"?

Ms. Cornish: I think "prevails" is one of the problems. I also believe it could say it is to be separate from general wage bargaining. It should be clear that the employer continues to have a responsibility to bargain in relation to that. In that sense, perhaps it could say a pay equity plan prevails but, notwithstanding this, the employer continues to have a general obligation to have separate wage bargaining.

Ms. Fish: Could you elaborate a bit more on the ways in which you see an assessment of the women's jobs and men's jobs you referred to? I believe you were referring to that, Ms. Spink, in your presentation.

Ms. Spink: Are you talking about gender predominance?

Ms. Fish: No, rather the question of whether there has been a traditional understanding of certain types of work. I guess Ms. Cornish addressed that as well, in the context that it had traditionally been associated with "women's work," and how you would see some exposure of that in the course of evaluating jobs as an alternative to the gender predominance test the government has chosen.

Ms. Cornish: Let me give you an example. You could have a male switchboard operator. It would be clear that everybody thought he was being underpaid because he was a switchboard operator. Historically, switchboard work has been associated with women's work. He could be the only male in that job, and therefore he would not--one, he is a male, which gets you into one side of it, though we would say he should be entitled to comply. However, it may be a situation where people would just generally recognize that as women's work.

Some of this is not as complicated as people think. I find at various times it is quite clear to people what is considered to be women's work. I know that may sound a little like overly generalizing, but if you were bargaining and you put forward certain jobs, certain people would have a general understanding of that.

Let us assume you have a situation where currently it appears to be more equal in terms of the occupants of the job but historically it was always a female job. In addition, the other situation is, one of our real concerns around the gender predominance--and we are already concerned with this, particularly in the public sector--is that employers have been told about the 60 per cent and 70 per cent. We are concerned that people are currently shuffling jobs to try to meet these requirements of getting in under 59 per cent or 69 per cent.

Our experience is that it is similar for many people who have been involved in employment standards legislation that talks about severance provisions. If you lay off 49 people every five months and 29 days, you do not pay severance pay. That seems to occur a lot; it seems to be how employers do it. They manipulate the system once they understand there are fixed ways in which they can do it. We are concerned that this bill is obviously one in which many employers and their lawyers will be sitting down and trying to figure out a way to get out--and we would like to limit the number of ways in which they can get out--of their responsibilities under the bill. To that extent, we think you are going to have to sort out a more flexible definition of it.

Ms. Fish: I could not agree more about closing the loopholes. I also agree absolutely with the removal of the gender predominance requirement. That is an amendment we will be placing.

I was really trying to get at something you said, and I am sorry I cannot find it in here; I thought I had marked it as you were going through, but apparently not. You noted that it might be necessary to look at sex role stereotyping, at jobs that have been traditionally occupied by women and so forth. While I agree that some things might be really easy to categorize and that you and I might look at them and say, "Yes, that has been called women's work over time and it is undervalued," what I am after is the way in which a presentation might be made to the Pay Equity Commission, for example, or the criteria or the test. Will you share with us a little bit more how you see that happening?

Ms. Cornish: I have been involved in classification cases in the civil service, dealing with the information and assistance clerks in the Ministry of Health. In attempting to reclassify them and to get them a higher wage, I actually brought forward an expert on women's work, Pat Armstrong, who gave evidence about how those kinds of communication skills and various things that women have are devalued and that those kinds of skills are not even written into the job description. In fact, the government's witness indicated



that communication skills were not part of the job they remunerated. Even though it was recognized that they were 80 per cent of the job, they said the class standards omitted communication skills in this job.

There are those kinds of things. There are situations, for example, where you would similarly have, let us say, communication skills or tension-managing skills that in an executive level job are considered to be extremely high for compensation but in a receptionist job are considered extremely low and innate.

There are various ways. I agree that some of the connections may be clearer to women than to men. Certainly, all of my information and assistance clerks saw it very clearly, and obviously the government did not see it as clearly, or saw it and chose to ignore it. Obviously, if you are providing fair compensation, it requires a fair amount of money.

Ms. Fish: About the three per cent fund, is that on wage or on a wage-and-benefit package?

Ms. Cornish: It is on wage and benefit. I understand that the present bill includes a wage-and-benefit package.

Ms. Fish: That is it, then. Thank you.

The Acting Chairman: Are there any other questions? Thank you for your brief. It was very interesting.

Those being all the presentations, we will adjourn until tomorrow morning at 10 o'clock.

The committee adjourned at 4:54 p.m.





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

WEDNESDAY, OCTOBER 1, 1986

Morning Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Charlton, B. A. (Hamilton Mountain NDP)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Offer, S. (Mississauga North L)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Smith, D. W. (Lambton L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Gillies, P. A. (Brantford PC) for Mr. Brandt

Mitchell, R. C. (Carleton PC) for Mr. Villeneuve

South, L. (Frontenac-Addington L) for Mr. D. W. Smith

Ward, C. C. (Wentworth North L) for Mr. Offer

Wiseman, D. J. (Lanark PC) for Mr. O'Connor

Clerk: Mellor, L.

Staff:

Ward, B., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant

Deputy Minister, Labour Policy and Programs

Klein, S. S., Policy Adviser, Labour Policy and Programs

From the Ontario Public Service Employees Union:

Clancy, J., President

Todd, A., Chief Negotiator

Peters, I., Chair, Presidential Advisory Committee on Pay Equity

Greckol, S., Technical Consultant

Lennon, E. J. S., Legal Counsel; with Cavalluzzo, Hayes and Lennon



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, October 1, 1986

The committee met at 10:12 a.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

The Acting Chairman (Mr. Partington): Ladies and gentlemen, I will call the meeting to order. I understand the minister is on his way.

The delegation here today is the Ontario Public Service Employees Union. You will have the entire day to make your presentation. We will give the committee an opportunity to ask questions of your brief.

We will commence now and recess at 12 o'clock for lunch. We will reconvene at two, and I hope the meeting will end at around 4:30. I wonder whether you would care to carry on and introduce yourselves, please.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Mr. Clancy: Mr. Chairman, members of the committee, my name is James Clancy, and I am president of the Ontario Public Service Employees Union.

With me as part of our delegation this morning is Andrew Todd, the co-ordinator of OPSEU's collective bargaining department, to my immediate right. To his right is Sonja Greckol, our consultant on pay equity. To my immediate left is Isla Peters, who chairs OPSEU's provincial women's committee. To her left is Elizabeth Lennon, legal counsel for OPSEU from the firm of Cavalluzzo, Hayes and Lennon.

Mr. Chairman and members of the committee, I do not know all the people in the audience behind me, but I do know that many of them are members of our union representing, in particular, the board of directors of our union and, indeed, representing our members on the various collective bargaining or wage category teams in OPSEU.

Our brief, Meeting the Challenge, is our response to the minister's call for the better way of achieving pay equity--that is, a better way than Bill 105.

Bill 105 has some serious defects. We find it to be confusing and incomprehensible to the average reader. Its timetable for payouts takes us into the 1990s. We are of the view that justice delayed is justice denied. In addition, it is our view that it could destroy the category bargaining system that we enjoy in the public service. Finally, we are of the view that it would require spending some \$100 million in order to pay out \$88 million.

Our alternative is a plan to raise the wages of female-dominated jobs to the level of male-dominated jobs immediately. It has the following advantages:

1. It is easy for the average recipient of pay equity to understand;
2. It would guarantee a fixed pool of available money for pay equity;
3. It would pay out quickly and uniformly; therefore, justice would be speedy, not delayed;
4. It retains and protects our category bargaining system in the public service and the right of the various unions in a given enterprise to negotiate independently for the members they represent;
5. It gets more money to more people with almost no administrative costs;
6. It allows the union to co-operate in its implementation rather than simply to react to unilateral implementation of Bill 105;
7. Finally, through a proposed complaint system, it provides a mechanism for the principles of equal pay for work of equal value to be applied.

OPSEU, our union, has a long and respected history in its fight for equal pay going back to the late 1940s and early 1950s, when public service workers, members of the Civil Service Association of Ontario, formed women's committees to fight for equal rights. In 1975 CSAO president Charles Darrow launched a new drive for equal pay for work of equal value for women in the public service on the heels of extension of the Employment Standards Act to cover crown employees.

Darrow cited examples of hairdressers paid 73 cents an hour less than barbers, seamstresses making 82 cents an hour less than tailors and maids earning 25 cents an hour less than male food service helpers. The government of the day agreed to initiate an investigation but rejected the call to enshrine the principles of equal pay in collective agreements.

Sean O'Flynn, my predecessor, continued the fight into the 1980s as viable equal pay legislation became less of a reality and wage controls shattered contracts and rolled back women's wages. Bill 179, called "a wicked law" by Canada's United Nations' ambassador Stephen Lewis, declared war on 500,000 Ontario public sector workers in 1982, depriving them of their right to free collective bargaining and turning it into collective begging.

With a five per cent ceiling on wage increases and many contracts rolled back, office and clerical workers were particularly hard hit, with individual women losing thousands of dollars. Part-time and temporary government workers, many of them women with no job security or benefits, saw their hopes of major progress dashed when the Conservative government used Bill 179 to prevent an arbitration board from ruling in their favour. Adding insult to injury, the member for St. Andrew-St. Patrick (Mr. Grossman), then Treasurer of Ontario, made it clear that the five per cent wage control was a ceiling. Many public sector workers did not deserve a raise at all, he said.

We respectfully ask the committee members present from the Conservative Party whether their party is committed to equal pay legislation for women in the private sector. How can we trust their call for extension of Bill 105 to the rest of the public sector when they hedge on the question of coverage for all women?

OPSEU has always fought for the rights of all workers. That is the nature of social unionism. We call for unity on the basic principle of pay



equity for all women, no matter what sector they work in. Legislation covering all women will ensure that no women get lost in the shuffle. Rules can be simple and flexible enough to accommodate all work places in both the public and the private sector. Comprehensive coverage can bring the unity and goodwill necessary to achieve good legislation and smooth implementation. This way we can truly meet the challenge of bringing equal pay to all women in Ontario.

10:20

These are the principles we present to you that we feel are essential for the effective implementation of pay equity in the province: coverage for all women; clear language to allow us to enforce our rights; respect for unions and their right to free collective bargaining; money into the pockets of women, not those of management consultants; payouts to women without delay; the right to a viable complaint mechanism; and finally, a special pay equity fund. Let me talk briefly about a number of those principles.

Clear and simple language: Bill 105 is a violation of our fundamental right to have laws written in clear and simple language. Given the resistance of employers, it is particularly important to make pay equity laws simple to understand, easy to implement and open to as little interpretation as possible. It needs to be clear that the laws are there to close the wage gap, to put money into the pockets of women and to correct years of unfair pay practices.

Before you, on pages 7 to 12, is our analysis of the bill and its weaknesses. I leave it to you to read that at your leisure, and we will respond to questions, if you like, later on.

Another principle is respect for unions. We argue that simple language is not enough to bring an end to discrimination in pay. The means for ensuring pay equity must also be straightforward. The provincial government, however, has piled layer upon layer of plans for job evaluation. These rigid layers of job evaluation plans across bargaining units and beyond will become the classification systems of the future.

We simply do not believe the protestations of management consultants that these job evaluation plans are only for the purposes of pay equity. No employer with an ounce of good sense will spend millions of dollars to implement job evaluation only to disband it after the pay equity payouts are made. Jobs will then become pegged to one another in fixed relationships as pay equity comparisons are made across bargaining categories and across bargaining units. Categories and bargaining units will lose their autonomy and independence as their wage bargaining becomes undermined by comprehensive job evaluation. Wages will become controlled by a central plan that demands global or establishment-wide bargaining. This is an attack on our democratic right to free collective bargaining. It will irreparably damage our strength at the negotiating table. Both men's and women's wages will suffer as our union is weakened. The Ontario Public Service Employees Union will not accept this lack of respect for our union or any union.

I draw to your attention the principle endorsed by the International Labour Organization that says, in reference to pay equity, equal pay, "Where such rates are determined by collective agreements, they should be determined by the parties thereto."

The next principle I would like to talk about briefly is the business of job evaluation. Management consultants who specialize in job evaluation--and more recently, in pay equity--generally are branches of United States corporations that make millions of dollars out of the employers' need to rationalize pay structures. Strong fans of pay equity legislation when it requires employers to institute job evaluation plans, consultants pride themselves on having universal standards for valuing work.

The consultants, who five years ago assured management that everyone paid women less, are now assuring us we will reap equity from their schemes. These days they specialize in the public sector, where there are big employers, deficits, a trend to cut back on jobs and a requirement to implement pay equity. They receive most of their income, of course, from the taxpayers.

The Ontario Public Service Employees Union opposes the use of taxpayers' money to bring in job evaluation on such a global scale. We believe there are other, cheaper and more effective methods of implementing pay equity, of putting money into the pockets of women.

The next principle is the question of payouts to women without delay. We believe that along with the commitment to equal pay legislation should come an acknowledgement that we face an urgent situation in which there is widespread systemic discrimination in pay. This is a crisis that nevertheless has existed for many years and is no one individual's responsibility. Once it is recognized as a problem, it is only a matter of good faith that solutions be found as quickly as possible.

We believe the proactive approach means taking the initiative to come up with ways of delivering money into the pockets of women quickly and efficiently. It means finding simple solutions. It means meaningful and responsible participation by all parties who have an interest in solving the problem.

Imagine for a moment that there is a famine in Ontario and the government responds by ordering each municipality to decide over a certain period of time how hungry its people are compared to those in the town next door. In two years' time, if time limits are enforced, the first deliveries of food will be made. Thereafter, food will be delivered at regular intervals until there is no more famine. That is the kind of scenario we face with Bill 105.

It is hard to understand why we should have to go through a complex, costly and time-consuming process at public expense when the results are fairly predictable and are on the record in other jurisdictions. As one hospital administrator said in Manitoba, "If we know that pay equity adjustments are about 20 per cent of pay, why do we not just pay it out?"

OPSEU takes the position that unions and employers should be free to negotiate pay equity in whatever form they can agree will provide quick payouts to women with funds set aside for the purpose.

Mr. Chairman and members of the committee, at this time I would like to introduce to you Andrew Todd, the co-ordinator of OPSEU's collective bargaining department, who will briefly outline for you the model that in our estimation delivers money quickly and efficiently to those women who have suffered for so many years.



Mr. Todd: Mr. Chairman and members of the committee, as a negotiator, I am attracted to what is pragmatic, given that negotiation is the art of the possible. I therefore have a healthy concern about the complexities of job evaluation as a delivery mechanism for this important project of pay equity. The practitioners of job evaluation would have you believe it is a science, but I see it as an art. If you examine it in any depth at all, I think you will find that out for yourselves.

Thinking about these healthy concerns over job evaluation as a delivery mechanism led us to the model we want to bring before you today. We think it commends itself because it combines fast and efficient payout of money in recognition of what seems to be now generally accepted in our society by one and all, and that is that there has been a systemic discrimination, as it has come to be called, or societal discrimination against women in the area of pay--the model combines fast payout and a system of value comparison.

10:30

The other aspect of this which I think commends itself to this panel, or ought to, is that our proposal parallels the present setup in collective bargaining. For example, we bargain wage contracts in the Ontario public service and elsewhere. We have groups of 5,000 to 7,000 people in relatively diverse occupations, and we negotiate a salary increase of, say, 10 per cent, which is applied to every person in that category.

In the sense meant by job evaluation, there is not a value comparison made of every job at that point. There is a kind of rough justice effect of a payout of 10 per cent in this example I am advancing. However, within that group there are classifications, people doing certain kinds of work, who say they ought to get more than whatever turns out to be the accepted norm for the entire group, because of various things, one of which is a value comparison based on internal comparisons, historical relationships with other internal groups or with external groups, and finally with market conditions.

For example, if you say after a job evaluation that you will slot people exactly according to what the job evaluation system has produced and that is how you will pay people, if you find in the market that you cannot attract anybody for the slot you have them in, employers begin, maybe not immediately, to agree they ought to pay more. Why? They cannot attract people for what the job evaluation slotting has produced.

We have a system now in collective bargaining which parallels what we propose in this model we have brought before you today. We have wage bargaining, which provides for a fast payout to everybody without doing a value comparison. We then have what we call special cases. They are called by other names in other jurisdictions, but these are simply classifications that say, "We should get more money because," and they have an argument about why that should be so. That is done without a formal job evaluation, but it is based on arguments with the employer about certain sorts of value comparisons.

When such collective bargaining ends, there may well still be people who say, "I got the 10 per cent and I did or did not get more money out of saying that I was a special case, but I am still not satisfied with where I ended up, because I am one of 5,000 people," or "I am in a group of 200 people" who are different or special or have some particular thing that commends them and ought to be worth more money.

Such people have open to them a classification grievance, in which the

investigation moves into a much more detailed examination: "What duties do you perform? What percentage of the time? What is the relative value of those duties? How does that job compare with jobs elsewhere in this bargaining group?" That may produce a satisfactory result.

However, such a person may also become part of a detailed job evaluation system that examines every position or every job family in that group, and we have been through that fairly recently in the Ontario public service. We took the 15,000 people who are in office and clerical positions and had a detailed, comprehensive, case-by-case value study of each of those positions in relation to all the other jobs surrounding it in that group.

The model we want to put before you today is a combination and a parallel of the kind of scenario I have just described. We think the law should be an enabling document, not one that dictates to the parties, as this appears to do. We are prepared to be persuaded on that point. It appears to dictate to the parties the details of how they are to bring about pay equity as opposed to negotiating those details. We feel the best and most acceptable result would be for the parties to negotiate a deal on the basis of existing collective bargaining norms; in other words, by dealing with what you know as opposed to trying to deal with something you do not know, thereby causing concern and apprehension to surface.

The model we have developed comes in two parts. First, we have examined the relationship between wages and the proportion of females in jobs or groups of jobs. In that examination, we find that as the proportion of women in jobs increases, the wage level decreases, and vice versa. I have stated that in the brief in the form of a saying or aphorism. If you are a woman in the Ontario public service, the more women who do your kind of work, the less money you make and the more men who do your kind of work, the more you make. It is as simple as that up to a point.

On examination, we feel that the simplest way to demonstrate this problem and its solution technically and statistically is through what is called the linear regression model. We have set that out on page 18. In a moment, we will go into it in a little more detail.

If you apply this measure to all the groups of jobs in OPSEU's public service bargaining unit, which numbers about 50,000 people, using only figures based on the classified or full-time work force--I digress to say we believe that pay equity should apply to all employees in the bargaining unit, part-time, seasonal and casual. We say that it probably does, but we want it to be more specific because the wage rates of part-time, seasonal and casual people in the Ontario government service are linked indirectly to full-time employees through the employer's obligation to pay such employees the equivalent full-time civil servant salary. However, that matter requires a great deal of policing and is fraught with all kinds of openings for not doing what ought to be done.

For the purpose of today, we have based our study only on classified or full-time positions. When we do that, we find there is a decrease of \$1.15 in weekly wages for each one per cent increase in the number of women in a job. We would like to show you in a little more detail what this means and how our proposed system would work in this regard. We will come to that in a moment.

Just to complete that thought, our research shows that a job family that is 60 per cent female, if you accept that as an acceptable norm--that is the figure that has been generally adopted in other jurisdictions and is the one



that appears in the present bill--in the Ontario public service is paid 60 times \$1.15--that is our finding on that difference--or \$69 a week or \$3,588 a year less than a job family that has no women in it. Similarly, a job family that is 100 per cent female is paid at 100 times \$1.15 per week or \$5,980 a year less than a job with no women in it.

That is the model we have devised. We now would like to go into a little detail about that. I will ask our consultant, Sonja Greckol, to demonstrate this using some slides to assist in understanding what the union is proposing today.

10:40

Ms. Greckol: Mr. Chairman, committee members, assembled audience, I would like to start by showing you how we have organized here the work force that we are dealing with. Some of you might want to move around briefly. This slide is also on page 18 in your booklet.

What we have before you here is a plot of all the groups of jobs in the OPSEU bargaining unit. They have been arrayed according to, on the bottom, the percentage of females who are in that group of jobs. Along the side, we have the wage levels for the jobs. Each of these points you see represents one group of jobs as closely as we can understand them to be defined in the legislation in Bill 105. For example, it means that the points down in this bottom corner are largely the points for clerical workers. Each point represents either a clerk general or a clerk stenographer and so on. For the individual series of jobs or groups of jobs, the overall proportion of females was calculated. The second calculation is the average wage that is paid to that group of jobs. So you have before you the overall distribution of that work force.

What I will lay over this now is the line which gets calculated, so you can see it displayed more graphically. What we see happening with that line that represents our \$1.15 is the decrease in wages that occurs as you add females to an occupation. Along the side where we have zero per cent females, we have a large concentration of occupations that span maintenance categories, administrative categories, technical categories and so on. They all have no women in them. Their average wage is clustered higher than the average wages further down as we move down the percentage of females.

The orange lines I have given you are indicators of the kinds of predominance categories that the legislation has identified. Down here, we have male-predominant categories and, over on the other side, we have female-predominant categories. You will see that the grouping of categories between those lines, essentially this grouping in here, is a grouping that is not predominant. It might be called an integrated category. That is where we tend to have the lightest scattering of occupations.

This method of constructing the scatter plot and developing the lines to try to identify the way wages change as the proportion of females increases provides us an entry into dealing with the wage gap as it now exists in the public sector or in the public service. When we talk about a wage gap of X percentage, whether it be 74 per cent or, more broadly speaking, the figure of 63 per cent that is often used, if we talk about that when we agree on it, it still does not give us any indication of how we could actually remedy it. That still appears to be the problem. We have a wage gap and we need pay equity developed on some methodology that will allow us to address this problem of the wage gap.

When we array the occupations in this way, we see how the wages change as you add women, so we start to organize that wage gap on a broader scale so we can see where the remedies might be applied. We start to see the penalty for adding more women to an occupation, and we get from the line a simple confirmation of what is the wisdom of day-to-day observation: if you add more women, you get less pay.

The red line you see up on the chart can be very loosely characterized in very nontechnical language as kind of a rolling average across all the occupations. The actual average of the occupations as you move up and down in the percentage points may be either above the line or below the line. The line represents a straightening out, loosely speaking, nontechnically, of the rolling average.

The object of pay equity, as we understand it, is to eliminate the effect of sex discrimination on wages. To do that, following from this model, would require shifting the points or the average weekly earnings that are on this female-predominant side of occupations upwards so our line moves more closely to a horizontal position.

Mr. Todd: Thank you, Sonja. In arriving at this alteration of moving a line from the angle that you saw it at originally to a level position, one of the effects is to bring about pay equity for women without having male occupations pay for it. One of the difficulties you face in collective bargaining is not to create a system in which you take money off one group and give it to another, because clearly that is going to drive a wedge between those two groups. We think that is another point in this program that commends itself, or ought to, to this committee in looking at how to achieve pay equity.

If you take the example we put on the board here and in our document, this can be equated to what I was talking about earlier in looking at how to compare this with existing collective bargaining. This compares with ordinary negotiations between the parties over how much everybody in a group should get. It is like my example of everybody getting 10 per cent.

One of the questions that has been raised with us by the employer, because we have discussed this with the Ontario government as an employer, is about the absolute desirability of having value comparison. This does not clearly do that. This is a statistical model based on the example I gave before that, if everybody gets 10 per cent, how do you differentiate among all those positions as to their relative worth? We say this is achieved by the complaint mechanism we are proposing. The parallel for it would then be what I talked about before: special cases, classification grievances, a large-scale job evaluation or combinations of those elements.

The two things you require are here in balance. One is that there is a payout not over four years but over something more like four months or less, followed by a system that says: "Okay, here is where everybody has moved as a result of this exercise. However, there are individuals or groups who say this is not sufficient because it does not take into account an examination of the value of their job in comparison with whatever other jobs they wish to advance to."

We say that after this we would be enabled in the legislation to negotiate with the employer over a complaint mechanism in exactly the same way we have it now. If you go back to our present system, after a round of wage bargaining--we are about to enter into another one for 1987--at the end of 1987, let us say for the sake of argument that a given category got the 10 per



cent I am talking about. Any individual in there at that time--or even before that, but let us say after that--can file a complaint that says: "I am still not properly paid. I want to make an argument that I should be compared with this position over here," which is in another wage bargaining category or is in another job family outside the Ontario public service or whatever he wants to say about it.

The merits of that are debated and it is subject to arbitration. The employer may say, "We do not agree with you." Eventually you will have to go to arbitration. The arbitrator hears both sides and decides you are properly paid or you are not properly paid. If he decides you are not, you move up. Such a person, if we track this all out, would have got the salary increase that everybody else got. If the classification grievance succeeded on the basis of value comparison, he would get another amount, whatever that produced, by moving up on the wage grid, and that might not be the end of it for that person.

10:50

He may fall into a group where the parties decide to embark on a job evaluation, as we have done recently with office and clerical employees, covering the entire grouping in which the individual finds himself. In that case, it is theoretically and practically possible to end up with a salary increase arising out of a general wage negotiation, out of a special case consideration within that wage negotiation, out of a classification grievance and out of the general, overall job evaluation system.

That is our present possibility, if you like. This bill ought to enable us to do the same thing for the narrower issue, relatively speaking, of adjusting pay equity that we do in the broader arena. So we have the fast payout system, which was brought about by this comparison we are talking about here, followed by a complaint mechanism where people can challenge that result by saying, "It does not go far enough. If it alters the wage grid, it moves me up, but it does not move me up far enough because it did not--because it was not designed to--take into account my relationship with other jobs inside or outside the Ontario public service."

If we put those two pieces together in the way we have described, or that the bill enabled, and state specifically that the parties could negotiate that, we would have a balanced system which is not radically different from what we now have, neither in structure nor in potential result. As I said before, we could have a situation where an individual, by the luck of the draw or chance, fell into a time period in which all of those possibilities for moving up on the salary grid happen to apply to him.

We have that right now in our office and clerical group. We are going to have people who, in 1986, moved up on the wage grid because of general wage negotiation, who are now in the process of being evaluated under the big, overall, job evaluation plan, and who will move up as a result of that on the wage grid. Under our system, even after that, they can still file a classification grievance saying, "I am still not in the right place, I ought to be higher," and make that stick through arbitration and, if not, through persuasion of the employer. We are now embarking on a round of 1987 negotiations where such a person could say, "My classification is a special case and here is why I should get more money," and succeed in all four of those. That probably would be unusual, but theoretically he could succeed in all those points and move up the salary grid under each one of those headings.

My argument is that there is no difference between that and a system where everybody moves up in that kind of overall way, based on the wage regression system, that is followed by a more sophisticated and value-based comparison for those people who wish to bring a complaint. Some people, perhaps the majority if this works out well from their point of view, are satisfied they have moved up sufficiently. But if they are not satisfied with that, we would have a mechanism for addressing that.

Those are the essential elements of our program. I will turn it back to James for anything further.

Mr. Clancy: To conclude, Mr. Chairman and members of the committee, we want legislation that guarantees the following principles: coverage for our women; clear language to allow us to enforce our rights; respect for unions and the right to free collective bargaining; money in the pockets of women and not management consultants; payouts to women without delay; the right to a viable complaint mechanism and a special pay equity fund.

We put forward our proposals for amendments in good faith. In addition, we have done extensive legal analysis of the bill. We welcome the opportunity to sit down with members of the committee at any time if we can be of assistance in clause-by-clause debate. We wish you well in your deliberations. All of which is respectfully submitted.

Mr. Polsinelli: Mr. Clancy, Mr. Todd, members from OPSEU, thank you for a very interesting presentation. I am sure it will stimulate some discussion amongst the committee members at a later point.

I have a few problems with it that I would like explained. Under your proposal, are you saying that if a job family, as you wish to call it, has a female population of five per cent in it, then it would receive an increase of five per cent times \$1.15?

Ms. Greckol: The model can be applied in two ways. In the literature where some of this has been discussed, you could roll up all the wages by that \$1.15 or adjust across the whole wage gap. The way Bill 105 is written now, female predominance is defined at 60 per cent female so it would in fact roll up the wages only for those occupations which are predominantly female.

Mr. Polsinelli: No, I am questioning your proposal. I think I have a fundamental understanding of the bill we have before us, but in terms of your proposal you are saying that in any job family which has any women working, you calculate the percentage times \$1.15 and you give them all an increase.

Mr. Clancy: Your understanding is wrong.

Mr. Polsinelli: Perhaps you can explain it to us.

Mr. Clancy: If you will allow us to.

Mr. Polsinelli: Please.

Ms. Greckol: We are proposing that the 60 per cent be the cutoff point on the wages for those occupations in which females account for more than 60 per cent. These would be the wages affected by this method. Between 60 and 100 per cent would be the wages where the increases would apply.

Mr. Polsinelli: You would still look at a job family and you would still want to determine what percentage of women was in that job family.



Ms. Greckol: That is right. This analysis already contains that because each of these points--if I could put the slide back on--for example, tells us that women account for 40 per cent of the workers in these jobs. Within the model, those jobs would be unaffected by payouts. When you move to 60 per cent, the wages will be adjusted for the jobs between 60 and 100 per cent.

Mr. Polsinelli: All right. If our understanding is the same on this, you would still look at a job family. You would still determine the percentage of females working in that family. If the percentage of females is more than 60 per cent, the job family would receive an adjustment and that adjustment would be 60 per cent or whatever percentage of female times \$1.15, which you have identified to be as something or other.

How does your proposal evaluate? Your chart is an interesting chart and I think it brings forward the message that men make more money than women on the average. I see that quite clearly in it, but it does not take into consideration the values between the different jobs. Are you not also saying that in using your proposal you are almost aiming a shotgun at it and saying, "Here is a blanket adjustment for all the women who work in jobs which are 60 per cent occupied by women," without really determining whether that is an appropriate adjustment in the sense of the value of the work they are doing compared to the value of work that men are doing in other jobs?

Mr. Todd: I would go back to the model we talked about a minute ago. If that were true and acceptable from the point of view of ordinary wage determinations, we would proceed only by means of a job evaluation. In other words, we would say: "Let us sit down and examine every job in the Ontario public service every year on the basis of its value and its relationship with every other job in the universe. After we have done all that, we will figure out who should get what money." Clearly nobody could embark on that. There is neither the time nor the interest. Nobody would support that type of system. There is an immediate necessity for payout in normal collective bargaining, and our argument is that there is an immediate need for payout under this system, followed by a more measured and detailed and in-depth study on the basis of value comparison, which would produce either a confirmation of that result or more money.

11:00

Mr. Polsinelli: Is your immediate payout not targeting the problem? Are you not just throw money at the problem now, and at a later point we will identify the problem and try to rectify it?

Mr. Todd: We do not see this as throwing money. It is more like wafting it gently in the direction of the effect.

Mr. Polsinelli: Do you not agree that one of the consequences of your proposal might be that some women would receive more of an adjustment that is due to the difference in the wage gap because of gender bias and some would receive less? In a sense, some women would receive too much money and some would receive not enough money.

Mr. Todd: That sounds like the reverse of the argument we had when wage and price controls were being heavily debated. We talked about justice and the politicians talked about rough justice. This may be a form of rough justice at the outset, followed by what we hope is a more sophisticated form of justice. We are not stopping at this point. We are saying that is the

payout that comes on the one-shot, large-scale basis, but we have not left it there. It is followed by other adjustments that have not been contemplated by this and that ought to be looked into. The problem is more that women are being undervalued and underpaid, and not that some people are overpaid.

Mr. Polsinelli: I agree.

Mr. Todd: That can be true in any system at any given time when you take a snapshot, but that is a subjective opinion. Some people believe our legislators are underworked and overpaid and other people think the opposite. That is a matter of some debate each time it comes up.

Mr. Polsinelli: The individuals who believe either of those things are probably right about particular legislators.

Mr. Todd: That is a value judgement and I leave that to you. When you come to determining that matter, after the result is brought about--let us take a wage and benefit increase for legislators, which is always a nice topic for debate in Ontario. After it is over, both the recipients and the other players in the game have opinions about what happened and whether it is right. These are subjective views. I might say I think that was wrong or too high or low or whatever, and that is my opinion.

What we are talking about here is that society in Ontario appears to have accepted that, generally speaking, women are undervalued and underpaid. This first shot is intended to rectify societal acceptance of that point in a tangible, meaningful and fairly quick way. For those who like complicated invoices and bills, if you want to make that kind of analogy, we offer the complaint system. After this is over, if you want to say you should have moved up twice as far or half as far again or three times as far, or whatever argument you want to make, you are able to do so on the basis of value comparison.

Mr. Polsinelli: I want to make two more points and then I will leave it to some of the other members of the committee.

Mr. Todd, you have admitted that your first approach has no value comparison in it. I guess you have admitted that, but you are requesting that the government gently throw some money at the problem rather than try to find out what the problem is.

Mr. Todd: I take issue with the word "admitted." That is an emotive word. I have not admitted anything. What I am saying is this demonstrates the fact that for a woman in the Ontario public service, the more men who do her kind of work, the more money she makes. So we are saying that if you want to figure out what to do about the 63 per cent, or whatever number it is you want to accept, by which women are undervalued, here is a way to do it, and it will not take you four years to figure it out.

Mr. Polsinelli: I am accepting that this chart shows that, on average, men earn more money than women. I do not think anyone in this room would dispute that fact. The purpose of this legislation is to redress the gender bias, the reason that men earn more money than women only because they are men, or that women earn less money than men only because they are women. That is the purpose of this legislation. We are trying to address that gender bias. As I see your proposal, you are asking us, the government, to throw money at the problem to give the majority of the women in that group a wage increase and then at a later point introduce a complaint mechanism to address



the gender bias question. Is that not a little like having your cake and eating it too?

Mr. Clancy: With all due respect, sir, we want to do both at the same time. We can have a Pay Equity Commission, a strong, viable complaint mechanism, but we are saying that this situation has gone on for 20, 30 or 40 years and we do not want to wait 20, 30 or 40 years to have those wages brought up. I want to emphasize to you that we want the right to negotiate this. Other bargaining units might want to negotiate a different model. We want the right to negotiate this model. This model is not only what you see on the screen. Along with it goes the complaint mechanism.

Mr. Polsinelli: You want the right to negotiate a model that is not addressing the problem.

Mr. Todd: We say it does. I have heard the figure 63 per cent used by people to say that is the amount, and I guess you can pick your number. Some people said that is the amount by which women have been undervalued, generally speaking, in Ontario.

Let us say you accept that figure for a moment. You are now talking about how to tackle that. Is it 63 per cent? That is one question. There is an argument about whether it is 50 per cent, 60 or 70 per cent and so on. That is a matter for negotiation that you may then have to settle.

After you have settled the question of how big the problem is, you are talking about what solution or solutions can be brought to bear on the problem. Let us say again that you finally agree it is 63 per cent. If you have a two-pronged program like this where half of that, for the sake of argument, is corrected by the regression-line system, you do not want to bargain over the rest of it. That is the way I would see it happening.

Let us say that, of the 63 per cent, this does 50. Now you are bargaining over the difference, or your complaint mechanism is based on arguing over the difference. I think most women--maybe not all women--would find this to be acceptable as a way of substantially closing that gap, and those who were not would then, under our complaint mechanism, be able to attempt to do something about it. But they would have to persuade somebody in the same way that we have to persuade either the employer and/or arbitrators of the value of our position. They do not just say: "Yes, that is a great idea. Here is the money." Therefore, it would not be throwing money in that sense. You have to justify it and you may lose. Your argument may not be accepted; even if your argument is still valid, it may not be accepted.

Mr. Polsinelli: Just one more question and I will be finished.

The Acting Chairman (Mr. Partington): We have focused on this issue for some time.

Mr. Polsinelli: One more question. This is to Mr. Clancy and Mr. Todd, I take it. Gentlemen, I am sure you are aware that the governmental commitment to this bill is to the tune of \$88 million a year after the four-year phase-in period; that the first payout will be in approximately 18 months; that 29,000 people will receive a benefit from this bill, predominantly individuals whom you represent--

Ms. Gigantes: It is 24,000 people.

Mr. Polsinelli: It is 29,000, 24,000 of whom are women.

We all recognize that this problem has arisen over the past 500 years, perhaps. If you had a choice between this bill and nothing at all, what would you choose?

Mr. Todd: That is like, "Do you want a lingering sickness or a quick death?"

Mr. Clancy: We want legislation brought in, I repeat, with the following principles: coverage for all women; clear language; respect for unions and their right to free collective bargaining; money in the pockets of women, not of consultants--take the money and put it where it belongs, not into the pockets of consultants; payouts to women without delay, not in 18 months, not in four, five and six years; get the money into those women's pockets and get those wages up; and the right to a viable complaint mechanism.

11:10

Mr. Todd: To answer your question directly, I do not think there is an either-or choice here. We are proposing that the bill be amended to enable the parties, if they want, to embark on this model as opposed to the model that appears to be dictated currently by the bill.

For the sake of argument, let us say the bill says you have to do system A. We want the bill to say you can do system A or any other system that achieves the goals of the bill that the parties are prepared to embark on and come to agreement on. That is the current system we have in Ontario for settling every other kind of labour-management dispute.

The Acting Chairman (Mr. Partington): Thank you, Mr. Todd and Mr. Clancy. We will move on to Ms. Gigantes.

Ms. Gigantes: I will ask any member of the group here, but perhaps Mr. Clancy would like to comment: The government suggested to us and to the public that this bill is very particularly and sensitively crafted--I think that is the word it used; it does not even say "drafted" or "written"; it calls it "crafted"--for the very special characteristics of the Ontario public service. What you seem to be saying to us is that it is not.

Mr. Clancy: As Brother Todd said earlier in his remarks, we are open to persuasion. If the government is prepared to sit down with us and ensure that this bill guarantees that we are able to do the things we have set out in our statement of principle and we can introduce a model such as this, terrific. I have yet to receive that commitment.

Ms. Gigantes: The bill as it is now drafted is not what you would consider to be a sensitive, crafted instrument for achieving what you are after within the public service?

Mr. Clancy: No. Very clearly in our presentation, our sense is that this bill, given the present language, does not allow us to do the things that we think have to be done.

Ms. Gigantes: The question that came from Mr. Polsinelli had to do with the throwing of money, the wafting of money without some kind of measure at the beginning. The government has suggested to us and to the public that the implementation of Bill 105 would bring in a four-year bill of about \$88



million, that the first portion of that bill would be collected by women in the public service at about month 18 from proclamation and that it would be a payout of around \$40 million, as I remember the scheduling of the payout.

Mr. Polsinelli suggests that one is haphazardly throwing money in the model you are proposing to us, which, to me, has the enormous benefit of providing money up front for people, whatever other questions we may have about the model. Have you done any rough calculations of what your upfront money might be in comparison with the government's \$40 million, 18 months or 24 months down the line? Do you know what we might be looking at? And just how much more is that throwing money at something than what the government has proposed?

Mr. Clancy: It is not throwing money. Brother Todd?

Mr. Todd: First, in the discussions we have had with the Ontario government in its role as employer, which is a difficult kernel to dissect sometimes, and in taking a look at the bill, it has made the point to us that there is no cap and, therefore, there is no \$88 million; there is an unlimited ceiling.

I do not believe that for a minute. As soon as somebody puts out the \$88-million figure, you had better believe the system will deliver \$88 million--maybe less, but certainly not more. I believe that in reality there is a cap, regardless of what people say.

The second point is that I think 18 months is a wildly optimistic estimate of what would happen under this bill.

Ms. Gigantes: Indeed.

Mr. Clancy: If we go back in time--and I have talked to the employer about this--to 1959, which is the last time the Ontario government did a massive, overall job evaluation of every job in the Ontario public service, it took from 1959 to 1965 to do it. They had 200 consultants. I do not necessarily mean outside consultants, but 200 people working on that project for that period of time. Then there was an implementation period just before that or just after that. I do not know all the details of that era.

Bringing it forward in time, we have just done a job evaluation exercise with the government, as I have mentioned before, for the office and clerical employees. That is 15,000 of about 50,000. It took the Ontario government--appropriately; this is not a complaint, this is just to demonstrate the time factor--two years to come up with the model, test it and negotiate various elements of it with us. The implementation of it has not yet been completed, and it has taken almost a year.

Ms. Gigantes: I would like to ask you about that in a moment, because I think that needs looking at in this committee too.

My real question is, if you give \$1.15 per week to each woman on the ratio you have described in the chart you have drawn up--

Mr. Todd: Accepting the 60 per cent predominance.

Ms. Gigantes: --if we said this would happen in a four-month period, how much money would we be wafting around?

Mr. Todd: Approximately \$130 million.

Ms. Gigantes: That is very helpful to know. That provides us with a comparison of what you are proposing and what the government has said it is proposing. It makes me wonder what kind of negotiation we would be into. You have described your follow-up position once you have done the quick payout, the rough justice element, as a position in which there would be negotiations and then an open complaint mechanism following negotiations.

Mr. Todd: For example, another factor that could be negotiated--we are not entering into the negotiations here--might be the absolute salary that people make, because there are probably classifications that are 90 per cent female, for the sake of argument, who already have a salary that would be generally accepted as pretty good. This is versus people at the 60 per cent predominance level whose salary would be towards the bottom of that chart. We may well negotiate with the employer that not all of the \$1.15 would go to that 90 per cent group if there is one. We have done that kind of examination. The overage or the amount that did not go there would be brought in at the bottom in order to bring up the most deserving, or the areas with the greatest problem.

Ms. Gigantes: You are suggesting you might, in negotiation with the government, come to an agreement about a cap on absolute salary and doing your \$1.15 per week contribution to women's wages under that level.

Mr. Todd: We might, again in the parallel with bargaining where we have a salary settlement that combines a flat dollar increase with a percentage so that the people below the average salary get more than the people above it. That is an intentional bargained effect to bring up people at the bottom more rapidly than people at the top. We do not do that every year, but from time to time we do it, and I see a parallel between that and what we are talking about here.

Ms. Gigantes: If I may just ask one other area question, when you have looked at your first-run calculation and at what happens beyond that, and the negotiations you see taking place in very much the format in which they take place now, can you give any examples of the different kinds of settlements that have been negotiated and of what that means for the impetus for pay equity? Has this long, complex evaluation process with the office and clerical workers in any sense opened up the negotiation process, in your view as representatives of those people, to better discussion of equal pay for work of equal value for the clerical and office workers?

11:20

Mr. Todd: On the first point, naturally, pay equity did not come along the day before yesterday. The name may be fairly current, but the notion has been around a lot longer than that. As with most other types of bargaining units, we have brought to bear some efforts to address that problem by the systems that existed in the absence of pay equity legislation.

If you look at our bargaining history during the past 10 years, or during any slice you want to take, the people who make the least--generally speaking, office clerical and people in food service or that type of job area--have had a higher percentage or higher dollar salary increase negotiated than the people with the top salaries. That is a generalization, but if you take a look at it, of the entire 50,000, we have intentionally tried to bring up people at the bottom and then within categories, because it is



administratively divided into eight categories of big job families. Some of them have advanced more quickly and the rhythm has been quicker than for others. Generally, that has been on the basis of low pay moving faster than high pay.

We have tried to address that under the systems we have, but it is a difficult and lengthy process and it does not necessarily produce the result we want. The systemic discrimination problem is bigger than the whole apparatus can take care of, and this is why we need something special.

With respect to office clerical, the problem we have with the present bill, which touches on the point you make, is that we have a job evaluation system that is for the broad purpose of determining a salary relationship on the basis of job content. The proposed pay equity system--and it is being called "job evaluation" for lack of another expression--consists of factors that are different from the ones used to determine job content.

Ms. Gigantes: Different from skill, effort, responsibility and working conditions.

Mr. Todd: That is right. These factors are to be superimposed on the existing system. What has happened in other jurisdictions--and this is our fundamental complaint--is that, first, it is a duplication of effort. Second and more important, in every jurisdiction we have looked we--Minnesota, Manitoba and others that have used job evaluation--the job evaluation system for the narrow purpose of pay equity adjusting has become the job evaluation system for all purposes. We say that this creates a system that is called upon to do a job it was not designed to do.

Ms. Gigantes: Can you give us just a moment's explanation of the difference between a job content job evaluation system and an evaluation system that measures jobs in terms of skill, effort, responsibility and working conditions?

Mr. Todd: The practical difference we face is that the office clerical system was developed during the two-year period I talked about before. A lot of time, effort and sweat went into producing it and negotiating the elements of it. It is based on certain factors.

Ms. Gigantes: You describe them as job content.

Mr. Todd: They are job content factors, which have to do with education, initiative, responsibility and things such as that. Whatever they are, they are known and currently exist. They bring about a certain slotting of people, or they will when it is implemented, on the wage grid.

If you superimpose another job evaluation system on that, which is what is proposed by the bill, you will get yet another result that, at the very least, will create confusion between those two systems. On the basis of looking at other jurisdictions, it is our view that, over time, the job content model will be overtaken by the pay equity model. You have the narrow field replacing the general field of determining the worth of positions.

The reason this worked in Manitoba and Minnesota is that they did not have an existing job evaluation system. The skill, effort and responsibility model came to be used by them for determining every question: job content, pay equity, whatever. If you said you moved two places up on the grid, then you moved up on the basis of those factors.

Ms. Gigantes: It is amazing to me that two years has been spent, the last 18 months, under a new government committed to using the test of skill, effort, responsibility and working conditions as a way of evaluating the value of a job, and you are telling me that the kind of evaluation system on which this government has been working for 18 months really is not that compatible, or may be swamped or overcome by the kind of evaluation we are looking for when we are looking for equal pay for work of equal value.

Mr. Todd: That is right. That is exactly what we told the government on the first day we were approached about this matter. It so happens that when it approached us it was in the process of bringing into being the end of this two-year period of working up job evaluation for 15,000 members of our membership, with a prospect of perhaps looking elsewhere in the bargaining unit to renew this system, which was last done in 1965.

Ms. Gigantes: This 15,000 group is mainly women?

Mr. Todd: It is 95 per cent women.

Ms. Gigantes: And it would constitute the largest group within the public service that you represent?

Mr. Todd: Who would be subject to this payout.

Ms. Gigantes: Right. Thank you.

Mr. Gillies: My first question, Mr. Clancy, arises out of one Ms. Gigantes asked. I am very aware of all the deficiencies in the legislation that you have pointed out. I agree with you that the legislation is needlessly incomprehensible. That is the word you use, and I think it is virtually incomprehensible.

My question is, do you think this bill is amendable to achieve what you want in a clear manner or, by bringing in rafts of amendments, do we risk making it worse, as I fear? I guess Mr. Polsinelli asked it in a different way: Should we pull this one and start again, or do you think there is something salvageable in there?

Mr. Clancy: My question to you as legislators is, can you bring in the amendments that will ensure that we are able to negotiate a model such as this?

Mr. Gillies: I think we can.

Mr. Clancy: The second question becomes, how much of that wage gap is the government prepared to close? The model gives us the vehicle and, after the negotiations, then you have the complaint mechanism. You can quantify the wage gap; you could be objective about it and quantify it. The question becomes, how much of that wage gap is the government--indeed, the Treasurer of Ontario--prepared to close? We believe it is simple and straightforward.

Mr. Gillies: Your preference then would be that we plough ahead and try to make the best of this exercise as opposed to the possible delay that may come with withdrawing the bill and trying something else.

Mr. Clancy: I go back to what I said at the beginning. I believe that, at this point in our province's history, people recognize that there is an injustice. It is different. Surely each of us recognizes that it is



different from what it was five, 10 or 15 years ago. Look at the Trillium--this is when we were an association--in March 1956, on page 5. Things have changed from 1956 to 1966 to 1976, and now it is 1986. I believe people in the province recognize that there is an injustice, and I believe sincerely that all three parties believe there is an injustice that covers all the workers in Ontario. As I said in my brief, though, I am unsure of the Conservative Party's position in relation to equal pay for the private sector. If the Conservative government and its party were able to tell us that position, it would be much easier for all three groups.

11:30

Having said that, and recognizing that the people of the province recognize that its time has come, I think the three parties can get together. Let us pull together. We recognize there is a problem. Let the three parties sit down and come up with a solution. I do not particularly care whether that means one bill or three. We can move to one bill. The Attorney General's bill is a short two weeks away.

Ms. Gigantes: Oh ye of much faith.

Mr. Polsinelli: It will be introduced in this coming session.

Mr. Clancy: As I understood it, the Attorney General was saying this session.

Ms. Gigantes: He is very elastic.

Mr. Gillies: Early fall.

Mr. Clancy: If the committee can agree on the principles, it might ask the Attorney General to appear before it to ask him when he intends to bring this legislation forward, and we will fold it altogether. If not, given the fact that we all agree in principle that it should happen, let us amend this bill.

We are saying to you very clearly to respect the role of the unions and the right to free collective bargaining. For us, the Trillium poem has been a must since 1956. I do not think we have to argue or justify to you our commitment in this area as a union and as unionists. We are going on to our fourth decade of fighting for it.

Mr. Gillies: I want to pick up on the last point you made. You speak very strongly in the brief about the risk to the autonomy and the independence of your union, that various types of schemes could put it at risk. This came up yesterday in another context. Do you believe that adjustments of wages outside of or on top of the collective bargaining system can take place that do not put at risk the independence and autonomy of your union? Do you believe it has to be an integral part of the collective bargaining system and nothing else?

Mr. Clancy: We are proposing that where there are unions and where there are unionized work sites, the model should include provisions that allow them to negotiate to close that gap. Then the question becomes, whether it be governments or private employers, how much they are going to put in to close the wage gap. It is just like when we go into negotiations every year; we want a decent wage, a decent living. It is open-ended. We have to sit down at the table and negotiate that. From the government's perspective, how much is it

willing to contribute to close the gap, and in turn, how much are the private employers willing to contribute?

At the same time, we are saying once that is concluded, what should be there not just for this year, next year or the year after is something akin to a Pay Equity Commission, a really strong, viable complaint mechanism that allows subsequent adjustments to be made.

Mr. Gillies: As well as ongoing monitoring, which is not in this bill, so that gains made through one pay adjustment cannot be eroded over time.

Mr. Clancy: Absolutely. I believe our model in terms of a complaint mechanism would provide for that.

Mr. Gillies: This is one thing that bothers me about this bill. There is the so-called proactive period during which adjustments are supposedly made, but after that the pay equity process is only complaint-based. I wonder whether I could get your agreement that there has to be something in place that is a little more proactive thereafter to ensure that gains are not lost over a time and everyone sits around waiting for somebody to complain.

Mr. Todd: We think everything ought to come within the ambit of collective bargaining, except in those areas where it has to be legislated because there is no collective bargaining going on. However, where there is, the parties ought to be able to make their own arrangement under that general heading of doing something in the area of pay equity.

For example, if there is going to be a Pay Equity Commission as a watchdog, as an ongoing supervisor, perhaps that is the body you would have to come before with your complaint or grievance. Either that, or you could fold it into our existing system where we have grievance settlement board panels. You could see a system where special panels would be set up that would be skilled in knowledge about pay equity, as are people who know about classification versus other more readily understood problems. Either way, whether there is a separate Pay Equity Commission of that type or whether we take an existing system and fold this into it, that is the ongoing mechanism.

The bill seems to say: "Here is our definition of pay equity, which is fairly narrow, and it is achieved when you do the following. After you have done that, after the four years are over, that is the end of pay equity. Then let us talk about other things in Ontario." We say that may well not, and probably will not, do the job because collective bargaining over wages, benefits and working relations never ends.

The first unions began operating in this province in the early 1800s and most of them are still here and they are still bargaining. That means there is something to talk about. Pay inequity is not something that lends itself to being undone in four months or four years. When it is accepted and has been around for a long time, it will not go away fast.

Mr. Gillies: One of the prime monitoring agencies could be your union because you would obviously be ensuring on behalf of your members that the gains were not lost.

Mr. Todd: That is right.

Mr. Gillies: I have one last question, and perhaps I should direct



it to you, Mr. Todd. The Equal Pay Coalition and others, including both opposition parties, have voiced concern about the gender-predominance feature of the bill; in other words, the 60 per cent and 70 per cent. The Equal Pay Coalition has very strongly recommended the removal of that provision and just to allow for an across-the-board comparison of jobs. What we are getting at on your slide is the group between the two red lines. They should be able to complain and have adjustments made. I do not think that fundamentally damages your model. Do you see any problem if that were to be done?

Mr. Todd: I go back to what I said earlier. We try to practise the art of the possible while advancing the ideal. We agree that the optimum situation would be to take everybody and go back to what Mr. Polsinelli was saying a minute ago about people where there are five per cent, one per cent or whatever, and do something in that area as well and have a big graduated scale where the thing gets made up. However, we have tried to make a proposal that does not so radically alter the general thrust of the bill that we are saying, "Start over again and make fundamental changes in it."

I do not think it is a contradiction to say that the ideal would be to proceed on the basis of everybody in the whole spectrum being affected, but for the purpose of demonstration of our model we have temporarily, if not permanently, accepted the predominance feature. That is a subject about which lots of arguing remains to be done.

Going back to an earlier comment by someone, if it is a choice between no bill and some bill, there are cutoff points where you have to make compromises for the thing to advance. In my view, that does not detract from still adhering to the ideal. Going back to the collective bargaining model, I may say that a certain group ought to get a 15 per cent salary increase, but if in the circumstances it comes out at seven per cent, it does not detract from my view that 15 per cent was right but seven per cent is the practical outcome and we press on for the rest.

Mr. Gillies: Just like bargaining.

Mr. Todd: That is right.

Mr. Gillies: This is a point that has come up a couple of times. There is built-in discrimination in this bill. I do not know whether you spotted it, but as we see it, a male in a female-dominated, low-paying job category, or family as you call it, could not complain and could not initiate a pay equity action. I see that as discriminatory. Do you agree that one of your male members who is a clerk stenographer or is in one of those categories should be able to initiate it?

Mr. Todd: I am not sure about that, but what I am sure about, and it is part of the reason we advanced this, is that our model takes care of that problem.

11:40

The Acting Chairman: Mr. Polsinelli has a supplementary question.

Mr. Polsinelli: I have had to learn a new language with this bill. As I go along I am always picking up new terms.

You have asked, Mr. Clancy, how much of the wage gap the government is prepared to close. When we are talking about a wage gap, what are we talking

about? Are we talking about the difference in the average wages that men earn versus the average wages that females earn or are we talking about that portion of the difference that is attributable to some discriminatory practice such as gender bias? You have got to be talking about it, when you talk about wage gap--

Mr. Todd: Make us an offer.

Mr. Polsinelli: The bill talks about gender bias. When I talk about wage gap, I refer to the definition in the bill. What are you referring to when you talk about wage gap?

Mr. Todd: We are talking about the wage gap which can be attributed to gender bias.

Mr. Polsinelli: So you have the same definition as in the bill.

Mr. Todd: We believe we do, but if you do not think so, we can argue about that.

Mr. Charlton: Perhaps we can start back at your graph and the number you have quoted us. You have said that your proposal for the upfront quick fix, I will call it, the four-month adjustment, would cost about \$130 million. Was that based on the assumption that the cutoff was 60 per cent with no wage ceiling?

Ms. Greckol: It is based on the assumption that the cutoff is 60 per cent and that the full \$1.15 is adjusted for 60 to 100 females.

Mr. Charlton: You said you would be prepared to negotiate some kind of a wage ceiling for the initial adjustment, and we threw out the figure of \$25,000. If that were to occur and we ended up with a ceiling under which everybody got adjusted, but we had a ceiling in the initial four-month upfront payment, what dollars would be involved and what number of people would be involved?

Mr. Todd: First of all, I want to clarify that point. I was not proposing that there be a ceiling against which nobody would get anything. What I was saying is that in bargaining we may determine that there are people who are in predominantly female categories but who make what comes to be agreed upon as a reasonably good salary versus people who are in the 60 per cent category who are right at the bottom. We may wish to adjust the \$1.15 factor by some amount we would negotiate so they might get a dollar, for the sake of argument, whereas certain other people would get \$1.30.

Mr. Charlton: So you were not talking about--

Mr. Todd: We were talking about the overall package, talking about the distribution of the money, not about limiting that absolute amount.

Mr. Charlton: So we are still talking about \$130 million and not reducing that in negotiations.

Mr. Todd: That is right. We are talking about how to distribute it in what we would consider to be a more equitable way.

Mr. Charlton: All right. As somebody who is reasonably familiar with your processes and what you describe as the special case negotiations, I have



some liking for your proposed upfront model and some problems with it as well. I like it because it puts the money right up front, quickly, without a lot of complicated delays and, as you suggest, some of us do not have a lot of faith in the 18 months and the four years of the present proposal simply because we know what negotiating some of these things is going to mean.

I have some concerns, although I like the money up front the way you have described it here. I guess Mr. Gillies got at the question, which was the limits in the bill, the 60 per cent and 70 per cent, as opposed to the ideal which is moving that whole line up equally. We will end up with a rather significantly bent line if we leave the 60 per cent and 70 per cent in.

It seems to me that what is going to happen is that, although in that proposal of leaving the 60 per cent and 70 per cent predominance figures in the bill it is going to be the lowest-paid categories that get the upfront money, it is going to mean the predominance of special case complaints are going to come in the middle category, because they will not get anything up front. Having seen your documentation, you are going to get the bulk of complaints in that middle group and any further adjustments for those people at the bottom end run the risk of getting lost in the shuffle.

As well, although the special case negotiations have been successful in some cases and unsuccessful in others, I recall in my own category when I worked in the service, it took us seven years in the negotiating process before we found a place we felt comfortable with in the salary grid. It took us seven years and several special negotiations before we got there, and that was in a category that was 95 per cent male dominated.

Mr. Todd: You were on the fast track.

Mr. Charlton: There are two things I am concerned about in your proposal. One is that large bulk of complaints you are going to get in the middle group, which may tend to lose some of the complaints for people who got an initial adjustment but still have a complaint to pursue. As well, keeping in mind the goal of equal pay for work of equal value, to make your proposed complaint process, the special case negotiations, quicker and more successful, what legal requirements do we need in this legislation specifically to help that process happen quickly and effectively to attain that ultimate goal?

Ms. Greckol: Perhaps I can deal with the first part of your question on the initial adjustment, special cases and so on. You are right that in terms of an adjustment it would create a kind of break in the overall wage structure. The thing that is important to keep in mind in the public service, and it is often true in other work forces as well, is that we are dealing with a situation in Canada and in Ontario of work forces that are so segregated that you tend to have relatively few occupations and people in these middle categories. In our model, some kind of adjustment and some kind of look at how that break occurs may be necessary.

Ms. Gigantes: One dot is not the equivalent of another dot.

Ms. Greckol: That is right. This is an average of all the occupations. It is not an average of all the people in those occupations. There are relatively few people in that middle group.

Mr. Charlton: A dot may represent a complaint though.

Ms. Greckol: That is right. I am saying those complaints in the middle are relatively small in number.

On the second point about the 60 per cent and the 70 per cent being of tremendous significance, they are of greater significance when you use the job evaluation model because they determine your comparables. In this model, when we are talking about 70 per cent male occupations, we have looked at all the males and all the females in the entire work force and then chosen the cutoff of 60 per cent female for the adjustment. The 70 per cent male or, along here, 30 per cent female, does not have the same kind of weight in this model.

Mr. Todd: On the second point you raised about the complaint model and the changes the bill would have to undergo to provide for that legally, to go back to what I was saying before, you could establish, as the bill appears to do, a special kind of pay equity court--we will call it that for a moment--to which you would come and address all your problems. One hopes it would have or build up expertise on how to deal with these complaints.

Alternatively, you could add that on as a factor in existing administrative tribunals and institutions such as the grievance settlement board in the Ontario public service, where you might establish panels which would have to be accredited to prove they knew something about the subject before they were entrusted with rendering decisions about it. If you had that kind of dispute, you would come along and appear before those specially set up panels. We could exist with either of those models. They are only slightly different.

Mr. Charlton: I understand that part of it. Mr. Clancy made clear earlier that you were somewhat flexible on the structure of how the system works. What I am getting at is this. You said, and we all know it is true, that when you take a special case, it does not matter whether you are right in whatever you are trying to accomplish. Sometimes you win in that negotiating process and sometimes you do not.

If we are committed, and we have all agreed there is discrimination in wages out there and that our goal is the principle of equal pay for work of equal value, what do we have to do in the legislation from a negotiator's point of view to ensure that we can reach that goal without continuing to sometimes win and sometimes lose?

Mr. Todd: Frankly, I am not certain that is possible. If we look around this room, we see the diversity of opinion represented by determining what is inequity, how to address it and how to bring about equity. If it were that simple, we would not be here and we would have found some way acceptable to everybody to have done this.

There will probably never be an end to the argument, any more than there is an end to the argument about anybody's occupation, whether it is a gender-based discussion or a content-based discussion. Should firefighters make more than policemen? That is an ongoing, current battle that will never be resolved to the satisfaction of those groups. If they were equal, one or the other group would say it ought to be paid more. There is a subjective quality to this that I do not think can be 100 per cent overcome.

We are trying to approach a model that, to the best of our ability, provides every opportunity for making the argument and building up a body of precedent against which later cases will be judged. If I make the argument successfully that under these circumstances there was inequity of this order and it is then corrected, I do not have to come back and reinvent that wheel every time.



Mr. Charlton: Perhaps I did not put it clearly. You are right; there will never be an absolute. I will put it more in the terms you have used so far today.

You said that for a number of years, and you can look back to at least the past decade and perhaps even longer, in the Ontario Public Service Employees Union's negotiating relationship with the government, you have been working to reduce the gap through the normal process of category wage negotiations and the special cases that have been taken. It has been reduced, but it has been an extremely slow process. You got more for the bottom salary scales in some cases and less for the top and you have taken special cases, but it has been a slow process.

When I threw out my example of a 95 per cent male-dominated category that took seven years to find its place, you said that was the fast track, implying that probably if it had been a 95 per cent female-predominated category, it might take 45 years or longer.

What do we need in the bill to speed up that process, to make it work better, still allowing the negotiation to go, which is what you are asking for, in the context of negotiating a quick fix and the ongoing special cases and everything else? What do we need in the legislation to make it work for you better and faster than it has in the past?

We do not want to do one quick fix and then watch the process go back into slow gear. Although it may eventually accomplish the goal, it will go into slow gear if we do not change something else.

Ms. Peters: We think we have put forward a plan that deals with what we see as an emergency situation. That is the fast way to get money into the system. After that, we recognize, and I think we all recognize, that equal pay for work of equal value is a long-term thing.

In this case, the people who can best talk about whether their jobs are undervalued are the women in the public service. That is why we go to a complaint mechanism that is there for ever. We feel that as the work force changes, you have to have protection so that complaints can be brought and dealt with. For example, what happens to new jobs that are created? There has to be access under a complaint mechanism for jobs that are wrongly classified, for women in jobs that did not get enough under the quick fix or the statistical method. That is why you want a complaint mechanism.

To get back also to what Mr. Todd referred to, we need a case law around equal value. That is what a commission can do and that is what a complaint mechanism will contribute to.

Mr. Charlton: Again, you need a case--

The Acting Chairman: Excuse me, Mr. Charlton. You have been questioning and there are two more people who want to ask questions.

Mr. Charlton: I will be wrapping up fairly quickly.

Ms. Peters: When you say what you want in the legislation, that is what we want in the legislation.

Mr. Charlton: I am saying that has not gone far enough in terms of

what I see as the problem and what has been expressed here as the problem. You have told us that although you have a negotiating process now, it has not worked to solve the problem or we would not be here. If it had worked to solve the problem, we would not be here looking for this legislation in the public sector.

I am not opposed to a complaint mechanism. It was mentioned in your brief that you want a bill that is not subject to a lot of interpretation. We only need case law if we end up with a piece of legislation that nobody understands. What do we need in the legislation to eliminate as much of the question as we can possibly eliminate and to fast-track the special case negotiations that will go on in the complaint mechanism after the initial upfront payments?

Mr. Todd: The case law reference is to the outcome of complaints, not to the legislation itself. To change the bill--not to change it necessarily--or to bring about what we talk about, we want the thrust of the bill to be enabling the parties. It is a stimulus. It sets out certain norms. It makes it mandatory.

For example, 10 years ago, I or anybody could have proposed that employers embark on pay equity under whatever system we wanted to devise and they might have done it, but they might not have. When I joined the Ontario Public Service Employees Union in the early 1970s, the argument was not over equal pay for work of equal value; it was over equal pay for equal work. As we allude in our brief, the argument was that hairdressers at psychiatric institutions who worked on female clients made less money than barbers who cut the hair of male clients. There was no reason for it except that was society. It was the norm. It was accepted. People shrugged and said, "That is the way it is." We fought the early battles about that element of it.

The move on to equal pay for work of equal value is an evolution from that fairness point to asking, "Now that we have sorted out the obvious discrimination that is seen in that example, what do we do about the wider problem where systemic or ongoing societal discrimination is taking place?" If we wait for the Ontario government as an employer, we would be waiting a long time. Their philosophical thrust expressed to us in every round of negotiations is, "We do not intend to lead; we intend to follow." Therefore, their view would be that when everybody in Ontario has a dental plan, that will be the time to talk about it for the Ontario public servant, and not before.

Breaking new ground is not the forte of this employer. You need stimuli that force them, if necessary, to go about things that are ground-breaking and new. We see this as obliging this employer, if not other employers, to embark on these negotiations with certain specified norms and certain areas that are left open to the parties to bargain.

Mr. Charlton: I understand that. It is unfortunate that we have not had the opportunity to read your specific criticisms of the bill. Perhaps you cannot give us now the definition I am looking for. What I am asking, and perhaps you can think this through and comment, is what are the definitions of the goal that we need in the legislation to assist you to bargain to that goal in the least complicated and most effective way?

Mr. Todd: We will table those with you after lunch.



The Acting Chairman : This may be an appropriate time to break for lunch. Mr. South and Ms. Hart have questions, and then perhaps, Mr. Charlton, you could read the brief and pose some more questions this afternoon.

Mr. Charlton: I will stand down and come back on after others have had a chance.

The committee recessed at 12 noon.





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

WEDNESDAY, OCTOBER 1, 1986

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

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Partington, P. (Brock PC)

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Smith, D. W. (Lambton L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Gillies, P. A. (Brantford PC) for Mr. Brandt

South, L. (Frontenac-Addington L) for Mr. D. W. Smith

Ward, C. C. (Wentworth North L) for Mr. Offer

Wiseman, D. J. (Lanark PC) for Mr. O'Connor

Clerk: Mellor, L.

Staff:

Ward, B., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy

Minister, Labour Policy and Programs

Klein, S. S., Policy Adviser, Policy Branch, Labour Policy and Programs

From the Ontario Public Service Employees Union:

Clancy, J., President

Todd, A., Chief Negotiator

Peters, I., Chair, Presidential Advisory Committee on Pay Equity

Greckol, S., Technical Consultant; with Sonja Greckol Research and Consulting

Lennon, E. J. S., Legal Counsel; with Cavalluzzo, Hayes and Lennon



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, October 1, 1986

The committee resumed at 2:10 p.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

The Acting Chairman (Mr. Partington): Ladies and gentlemen, I will call the meeting to order and start with Heather McAllister who has a statement.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Dr. McAllister: It is not exactly a statement. I have a point of information and a question for the Ontario Public Service Employees Union. In their presentation this morning, they referred to the disastrous impact that the implementation of pay equity has had in the state of Minnesota and in the province of Manitoba because of the use of job evaluation systems. I would like to advise the committee that Manitoba has not fully implemented its pay equity program yet. They have only recently jointly negotiated to use the Hay plan for job evaluations. It would be extremely premature to jump to any conclusions about the impact of job evaluation and pay equity in Manitoba on the collective bargaining process.

Second, I was quite curious as to what evidence you might have for Minnesota. On a number of occasions in recent years, I have heard Nina Rothchild, who is the pay equity commissioner for the state of Minnesota, speak about pay equity in glowing terms, so it comes as quite a surprise to me to hear that there have been disastrous consequences for collective bargaining in the civil service in Minnesota. Also, I note that Minnesota, after implementing pay equity in the narrow civil service, decided to expand coverage to parts of the broader public sector. I am doubly curious as to what the disastrous consequences have been for collective bargaining and why Minnesota would then have chosen to use job evaluation for parts of the broader public sector. If you can provide some illumination on what happened in Minnesota, noting that you incorrectly suggested Manitoba has fully implemented pay equity with disastrous consequences, I would like to proceed from there.

Mr. Todd: The lack of lustre on our glow has nothing to do with pay equity. Our glow over pay equity can be the equal of anybody else's. On the other hand, I do not think I used the word "disastrous" in describing either Minnesota or Manitoba. We said that they did not have a job evaluation system in place when they brought in pay equity to those two jurisdictions. When they did, the job evaluation plan for the narrower purpose of determining pay equity evaluations became the job evaluation plan, period. My point is that in contrast in the Ontario government service, there is already a partial job evaluation plan in effect that is based on completely different factors from the plan now proposed for pay equity determination. I was making the point that if you now impose that new plan on top of the existing plan, which has

not yet been implemented and is about to be implemented at the end of October, we are going to be into a very difficult and problematical situation in that regard. I did not say that Minnesota or Manitoba was disastrous. The point we want to make about that, which we can demonstrate to you, is that at the end of their job evaluation, the results that they obtained are not markedly different from our linear regression line. I am going to ask Sonja to demonstrate that with some figures we got from Manitoba and Minnesota.

Ms. Greckol: The figures I have here are some Minnesota adjustments that we were able to obtain. I think Nina Rothchild has been frequently quoted in Minnesota as saying that where adjustments were required, roughly a 20 per cent adjustment is required. We have got from them some figures on their actual classifications and the kinds of the adjustments that have been made. We--

The Acting Chairman: Hansard cannot pick up what you are saying, so could you please use the microphone.

Ms. Greckol: Can you hear me now? I have here a number of selected categories. What we have on this slide is just a number of categories that we were able to get to look at the increases. The administrative secretary category increase was 18.1 per cent; the increase for centrex telephone operators in the Legislative building was 18.7 per cent; the increases for clerks 1 through 4 ranged from 19.1 per cent to the 23.8 per cent increase, which is interesting as a variant on what is already being proposed in that the representative job level is the level that would determine the increases for all the categories. That is in the original Bill 105 draft.

Going down to clerk stenographer, you also see the same kind of adjustment, 13.3 per cent on the low end and 17.8 per cent on the high end. Moving down through clerk typist, it seems to us that many of the adjustments that would result from the kind of regression model address the same categories and give us, in a very broad ball park, similar kinds of results to the Minnesota results. In fact, the regression analysis could be pushed a bit further and made more complex. We are starting from the simplest possible model so we can have a model that is comprehensible. The model can be amplified considerably in a number of different ways, and some other factors could conceivably be calculated into that model.

Mr. Wiseman: It looks as though you have changed the figure.

Ms. Greckol: It is 15.2 per cent. It was a typo in the first one. For those of you who cannot see, I can run through it: Food service workers, 10.1 per cent; data entry operators, various groupings from 16.9 per cent to 14.3 per cent; dental assistants, 15.2 per cent; and dental hygienists, six per cent. Those are the increases we were able to get from Minnesota in terms of details on the categories.

Mr. Gillies: On a point of order, Mr. Chairman, that has been bothering me for the last couple of days. The normal parliamentary convention around here when government legislation is being carried through a committee is that the minister or, in a pinch, the parliamentary assistant is here to guide the legislation through. While the interventions from staff are most helpful, and I do not want to detract from them, I wonder when we might be graced again by the minister's presence or that of the parliamentary assistant. If this legislation is as important as I think it is, one of them should be present.



The Acting Chairman: Perhaps we can find out. The parliamentary assistant was here this morning and the minister intended to be here. We can have the clerk check into that.

Mr. South: The indication this morning was that the rough cut or whatever would cost something like \$130 million. Do you have any kind of best guess on what the fine tuning would cost? A topic that has been discussed is how much is the government prepared to put into this? We have to think of that. One percentage I have heard bandied around is three per cent. What is the total civil service salary bill now? Does anyone have a figure? Is it something like \$4 billion?

14:20

Dr. McAllister: It is \$2.2 billion.

Mr. South: Three per cent of \$2.2 billion is--let us see. I get my decimal point right here.

Mr. Todd: You are doing great.

Mr. South: Three per cent of \$2.2 billion--is it \$66 million? Is that right.

Mr. Todd: I think we can perhaps wrap this up today.

Mr. South: Have you people heard of these kinds of percentages, or do you have anything in mind? Again, we are trying to redress problems which have accumulated in the past. I think most of us agree that they were not created with any malice aforethought; it was a thing that evolved. Now we are trying to redress them. Again, the consensus I get from this room and from anybody you talk with about it is that everybody is in agreement in regard to the basic philosophy and what the heck it is we are trying to do.

It would be useful to try to put some numbers on it, some percentages or whatever, because it is going to be carried on to the private sector. If we add three per cent to the total labour cost--we are competing in a world economy, and I think it then behooves us to try to be three per cent more competitive or in the end we will do ourselves out of jobs. I think it is very useful to approach it from that point of view.

Mr. Gillies: Your brief said something about the commitment of the Progressive Conservative Party. Would you like to expand on that?

Mr. South: You said a rough cut was \$130 million. Would you like to make your best guess of what fine tuning would add to this cost?

Ms. Gigantes: How much do the shavings cost?

The Acting Chairman: I think Mr. South has asked a serious question and deserves some consideration from the committee.

Mr. South: Thank you. I thought it was. Perhaps I am missing the point.

Mr. Todd: To go back over what we said this morning, if you follow the program we propose for the initial payout here, on the basis of only the full-time staff in the bargaining unit, because there are part-time and other

kinds of employees who are not for the moment factored in, we estimate it to be around \$130 million.

Then we coupled that quicker payout with a complaints-based system which would be done on the basis of value comparisons. If nobody complained after the \$130 million was paid out and everybody was satisfied that it did the job in whatever group you were dealing with, in this case the Ontario public service, then there would be no further cost. Human nature being what it is, I doubt that everybody would then agree that was the end of pay equity. There would be complaints that while it had been addressed, it had not been sufficiently addressed.

Therefore, it is not possible to give even an estimate or a guesstimate of what further cost there may be, because those will arise out of determining whether or not the job had been done. If the parties to the dispute did not agree there should be more money paid out, then some third party would have to decide that under whatever system you are going to have. We would have to come before that body or group or individual and make our case.

However, if the individual or panel--whichever it turns out to be--agreed that, although part of the pay equity job had been done for a particular job or family of jobs, more remained to be done and made a ruling in that regard, accepting the union's position, the employer's or something in between--they would have to have that freedom--then the amount that it took to redress that problem would be so ordered. Our submission is that this bill would include that factor in it.

In the same way that arbitrators' awards are now final and binding for other purposes, including, by the way, for interest disputes about how much salary increase ought to be paid, so too in this case a pay equity dispute would be resolved. If the arbitrator said more money should be paid, the employer would be obliged to meet that charge, but because nobody has the ability right now to say how many people would complain, we cannot give you an exact figure on what you would be facing.

That may be different in degree, but it is not different in kind from the current structure of the bill, which as I understand it, although figures have been bandied about, says there is no limit on how much money has to be expended to attain pay equity, at least theoretically. I suspect the figures that have been given out as estimates would probably become the ceiling of expenditures.

Mr. South: Yes. No matter how idealistic we all want to be, I think in the end this will be one of the constraints that will determine the speed with which it is brought about and how much you do at any time. It is nice to get some kind of a ball-park figure of what we are talking about. Then we can be a little more realistic in our own expectations of how quickly it can be done.

Mr. Clancy: Another way to approach the question might be to get the government to tell us how much it is going to commit in terms of dollars to closing the wage gap.

Mr. South: I have heard three per cent. That was not a government figure, but it was the experience of other jurisdictions that have gone to this kind of thing. It cost them in that order. They were saying it is not the scary thing that some people were trying to make it out to be, those who are saying, "If we go this route, the costs would be so onerous that in the end, it will put our economy out of whack."



Mr. Todd: That is why we have stressed that the delivery mechanism ought to be rooted and founded in collective bargaining. Except for the upfront money we talk about, the parties would determine by negotiation on both sides the distribution of the upfront money and what happens to complaints after the fact, first, to maintain the integrity of the system and, second, to provide for complaints against what the parties have done.

The Acting Chairman: Dr. McAllister wants to bring a point to the committee.

Dr. McAllister: I wanted a point of clarification from the Ontario Public Service Employees Union representatives to make sure my understanding of what they are proposing is correct.

You are suggesting that for the proactive implementation you will be satisfied with, to use a phrase that has been coined in other contexts, a sort of rough justice approach. However, you concede that there will be gender-based discrimination in pay that will not be redressed through that approach, because you are aware there will be a necessity for a complaints provision.

If we were thinking of unorganized workers in particular, it means that following the completion of your proactive program, there would be discrimination outstanding, but unless people proceeded with a complaint, which might be more problematic, especially where nonunionized workers were concerned, no matter how strong a complaints procedure, the discrimination would never be redressed during the proactive period. There would remain some outstanding discrimination that potentially might not be addressed during the proactive period. Is that correct?

14:30

Mr. Todd: The rough justice, as you put it, that has been talked about may be accepted as justice by all concerned. Theoretically, at the end of that exercise everybody concerned with it may decide that is sufficient. In the same way that you have a ratification vote following the implementation or proposal of a new salary increase, the vote may be 80:20 in favour of whatever the figure is. The 20 per cent does not necessarily agree the job has been done, but the majority has decided it is sufficient for that particular thing. It may well be. We do not concede that there would be bias left over.

However, we are saying that if people feel there is, there ought to be in every system a mechanism for a complaint, a dispute or a difference of opinion that is alleged. Then it is up to the system to deal with it. The allegation may be found to be true. It may be found to be partially true. It may be found not to be true. In spite of the finding, the individual may not agree with the finding, but he is left with it.

First you have the rough justice, which you may agree or not agree with. Then you can have any number of disputes you want, but at the end, having received an answer, you may not like the answer. Until your dying day you might say, "I am not properly slotted where I should be." We can only do so much.

Mr. Clancy: What you have as a safety net is the complaints mechanism.

Dr. McAllister: Would your proposed process for implementation lead

to a situation where the parties in bargaining would be negotiating pay equity adjustments for nonunionized employees?

Mr. Clancy: Are you suggesting that your government will give us bargaining rights over the thousands of people who have been excluded?

Dr. McAllister: No, I am asking as a point of information. I am not clear whether you are suggesting that the implementation of pay equity in your proposal would be only for OPSEU members or whether you would also be negotiating pay equity for non-OPSEU members?

Mr. Todd: Our brief is directed, and we say it in here, mainly at the Ontario public service bargaining unit because that is the topic under consideration and it is focused that way.

Dr. McAllister: That is right.

Mr. Todd: We represent 97,000 employees ourselves. Then there are umpteen other unions and organizations. We say this is a way of doing the job for our membership in the Ontario public service, but it is also a model that I think would be attractive for people in the private sector who do not want to get involved in hiring a job evaluation consultant and all the rest of it.

Dr. McAllister: That is not what I am asking. I am asking about the other 20 per cent of employees in the Ontario public service who are not covered by unions but are covered by our bill at the present time.

Mr. Todd: If you are happy to make them temporary or permanent members of OPSEU, we will have no problem in covering them.

Dr. McAllister: Is the answer to my question that you are proposing that OPSEU would negotiate with the employer an approach to implementing pay equity that would include all employees in the Ontario public service? That is a very narrow question.

Mr. Todd: In the sense that we always do that because on a de facto basis we negotiate for people who are excluded and are in parallel classes to the bargaining unit. They are excluded not for job content reasons but for other legal reasons. They get the same pay in most cases. It would have that effect.

Dr. McAllister: That is correct, but you do not currently negotiate for management employees. I am wondering whether your proposal covers them.

Mr. Todd: Our proposal covers them if you want it to.

Dr. McAllister: I am asking what your intent is, not what the government's intent might be.

Ms. Fish: On a point of order, Mr. Chairman: I think they have answered that. We have heard that several times. I also think it is timely for us to hear once again when on matters of policy we will have a minister or parliamentary assistant here, rather than a shirty exchange from staff in questioning deputants before this committee.

Mr. Gillies: On the point of order, Mr. Chairman: The purpose of these hearings and this forum, a legislative committee, is not to hear the various opinions of staff members. This is a forum in which the elected



officials receive briefs from interested parties such as OPSEU, ask questions about them and take that into consideration in their deliberations. If the minister does not think this is sufficiently important to attend, I hope he will rethink that. I see the parliamentary assistant has returned. It has always been the practice of this House that one or the other is present at legislative committee hearings at all times when government legislation is being considered. If the government cannot get its act together on this, we have a problem.

The Acting Chairman: Let me to speak to this. I was about to speak to it and at that point Mr. Polsinelli returned. The minister will not be here today but the indication to us a few minutes ago was that Mr. Polsinelli was on his way. Of course, he made good that information by being here. To set the record straight, as I understand it, there is no requirement that the minister or the parliamentary assistant be here other than at the time of clause by clause. Obviously, it is important to the deliberations and it is nice to see you here, Mr. Polsinelli.

Mr. Polsinelli: It is my intention and the minister's intention to be present on as many occasions as we can during the deliberations. We want to hear from as many groups as possible, hear their opinions and their points of view, and take them into consideration in amending the bill. I also point out that the members of the Conservative Party, particularly Mr. Gillies, can rewrite the laws any time they want and I will try to consent to them.

The Acting Chairman: In any event, can we carry on with the proceedings?

Mr. Gillies: The parliamentary assistant may not have been around here long enough to know that it is the practice that the minister or the PA be here at all times. If he cannot be bothered, perhaps I will send my assistant here tomorrow because there are a lot of other things I could be doing.

Mr. Polsinelli: Is his position consistent on this or is it a matter of choice?

The Acting Chairman: Rather than get into a debate among committee members, can we continue and have Ms. Hart ask the questions she would like to put to the representatives?

Ms. Hart: I have a couple of points of clarification. I believe Mr. Todd dealt with this. Would the Ontario Public Service Employees Union's proposed mechanism apply to individual complaints or just to complaints by job category?

Mr. Todd: It is our proposal that they apply to individual complaints. This is something that would have to be worked out in detail. It may be that everybody in a job family is affected by the same complaint. It would not make sense to have 50 individual complaints heard one after the other. They might be subsumed and the whole issue heard. Then the remedy would apply to all the people. However, it is individually based in our submission.

Ms. Hart: I see that my other point was addressed by Mr. Charlton before lunch, but I have one other question that arose in the questions to you. It has to do with whether the proposed bill builds in discrimination against men. Perhaps the ministry can answer that for me. There was a suggestion--perhaps I did not make it clear enough--that the bill enables women to complain but not men.

Dr. McAllister: There may have been a suggestion this morning that Bill 105, as currently framed, does not allow men, for example, who are in predominantly female groups of jobs, to have equal rights as women in those jobs. In fact, they have full rights to redress and they have full rights to complaints under Bill 105.

Ms. Hart: If I understand it correctly, anyone who is an employee governed by a plan under the proposed bill is able to make a complaint. Is that correct?

Dr. McAllister: Yes, all employees.

Ms. Lennon: It is important to understand what is meant when we talk about a complaint under the bill and what it is currently possible to complain about under the bill. As we read the current section 26, which is the provision that allows for complaints that are not part of the pay equity plan, the only thing that can be complained about is whether new gender-based compensation practices have been created after the pay equity plan that do not meet the bill's definition of pay equity.

The bill's definition of pay equity is not our definition of pay equity. Our complaints mechanism would allow any woman or man in a female-predominant job to complain that he or she was not getting equal pay for work of equal value. The existing complaints mechanism is very narrowly focused, as we see it, and completely inadequate. It is very hard to imagine what kind of complaint could actually be filed under that provision. When we talk about a complaints mechanism, we are talking about something quite different than what is currently found in section 26. We are talking about equal pay for work of equal value as the follow-up to our proactive, quick-fix, negotiated pay equity plan.

14:40

Ms. Hart: Whereas the bill assumes that pay equity has been achieved, at least at a point in time, and goes from there.

Ms. Lennon: They assume that pay equity has been achieved but they tell us in the act what pay equity is in section 5. It is almost impossible to scan that section and figure out what is intended, but it is clear that it is not equal pay for work of equal value.

Mr. Gillies: I am confused. If you look at the Equal Pay Coalition's brief from yesterday, it says that men who are in what is traditionally considered to be women's work, which may be low-paying, do not have the right to complain under the bill. I did not hear that challenged by anyone from the ministry yesterday. If that is not the case, why do we not clear it up?

Dr. McAllister: To set the record straight, under the bill men who are in predominantly female groups of jobs have equal rights with women in predominantly female groups of jobs to complain about the pay equity plans.

Ms. Gigantes: But men who are not in predominantly female jobs do not have the right to make a complaint.

Dr. McAllister: Neither do women for that matter.

Ms. Gigantes: That is right.



Dr. McAllister: In other words, in a sense, you have to be affected by the plan. Actually, that is not quite true. You can argue if you are not covered by the plan in the first instance, if you think your group should be included. Once you are included in a pay equity plan, you have full rights to complain about that plan and its implementation during the proactive period regardless of whether you are male or female.

Mr. Gillies: It is part of the gender predominance situation again.

Dr. McAllister: You have to be a male or a female in a predominantly female group of jobs. Only people who are affected by the plan will be complaining about it, in general terms.

Mr. Gillies: In the context of the coalition's brief then, because they want the gender predominance out, this is a feature they also want out.

Ms. Gigantes: I wonder whether I can go back to some of the discussion we had this morning. In particular, I have been looking over pages 13 and 14 and trying to think of the implications of what you say under the section that is headed "Respect for Unions." In many aspects, your presentation to us today has been quite similar to the approach the Equal Pay Coalition took in its presentation yesterday. Both presentations stress an initial what they called rough justice and some people have called a quick fix, in any case some model--you have outlined one type specifically for our consideration--that would effect a quick payout for women in groups that are most likely to have suffered from discrimination against women's work.

They suggested to us we get rid of the whole business of designation of women-predominant groups and male-predominant groups and simply look at things in what they call commonsense terms and ask, "What has traditionally been women's work?" This might suggest categories that would not get caught by the 60 per cent, for example, I will say off the top of my head a social worker category or something of that nature, work that in the past at either a nonprofessional or professional level had been carried out primarily by women and was somehow thought to be a service area to which women were particularly suited. They suggested that kind of approach as the model or mechanism to be used to give a quick payout.

At the other end of their proposal to us, as you did, they suggested a very strong complaints mechanism. Therefore, at the beginning and at the end we are being advanced the same kind of approach. However, I see a difference in the middle and I see that difference as coming in the concern that exists, as outlined on pages 13 and 14 of your brief, about the comparisons across job categories.

I am assuming, and correct me if I am wrong, that your complaint proposal, the safety net you see as the final portion of the proposal you have laid before us, which is similar to that advanced by the Equal Pay Coalition, would if I understand it correctly be a mechanism that would allow comparisons across bargaining units and across job categories on the basis of equal pay for work of equal value. Am I correct?

Mr. Clancy: Yes.

Ms. Gigantes: For example, if we had a psychiatric assistant 2 category that somehow had not been addressed or had not been addressed adequately in the first round of the early payout process you are advancing to us, and individuals or a whole group of individuals in that category wanted to

be compared to a resource technician 2 or a pharmacy technician in another bargaining group, that would be done on the basis of equal pay for work of equal value.

Mr. Clancy: Not only in another bargaining category, but also in another bargaining unit. We would even go so far as to say with somebody outside the public service.

Ms. Gigantes: Then it seems to me the first and last portions of your presentation to us are absolutely comparable. It is the in-between part that is different.

Mr. Clancy: I am a little unclear how the beginning part, the rough justice part, if you will, which I think--

Ms. Gigantes: They did not offer us a specific model and you have, but the approach is the same. It is the middle portion, in fact the portion that perhaps has been the total or major focus of Bill 105 as it is currently constructed, where there seems to be a difference in approach.

As I understand it, you are saying: "Give us the upfront payment. Give that to the women members on whose behalf we negotiate"--in the kind of model you have suggested or a comparable model--"and then let negotiations proceed on that basis. At the same time, we will deal with any problems that do not get settled through normal collective bargaining processes in the eight bargaining categories. We will deal with that by individual complaints or a group of individuals' complaints." Do I have that right?

Mr. Clancy: Yes.

Ms. Gigantes: The coalition suggested to us that we could not count on that process and that we needed to use the period after the initial payout to spend whatever time was necessary to provide whatever job comparability evaluation needed to be made in terms of skills, effort, responsibility and working conditions, and that would be across bargaining units, across employees of whatever employer. Again, they are interested in comprehensive coverage in Ontario, but they mean whatever employee groups exist, either organized or nonorganized.

It is that difference I see between the approach you have made today and the one they outlined to us yesterday. I have a bit of difficulty understanding that middle portion of your proposal to us. I can appreciate the need for the quick payout and for the complaint process at the end, but the middle portion, that ability and indeed mandated comparison of jobs, a mandate given to employers, to employee representatives is an important part of a system that is going to provide real access to women to address the large problem of pay equity.

14:50

I do not think the quick payout can solve the problem. If we leave all the rest to be addressed by what is a very slow process, as we experience it and as Brian Charlton expressed it this morning, plus individual complaints, we are going to end up with a system that does not offer specific mandates to the employee representatives and the employers to meet the target of equal pay for work of equal value or to offer an understanding to women about what this process will provide within what time length. I am concerned about that.



Mr. Clancy: You should go into a psychiatric hospital in this province and see a 55-year-old woman pounding up the back stairs, concrete steps, carrying 30 pounds of mashed potatoes to a ward that is full of frenzied patients. Look at this woman's pay rate and give her this bill or this plan and say, "Don't worry, it is coming, it will be along." She will be gone before it ever comes. It will not put the money in her pocket.

You say you do not understand the middle to our plan. There is no middle.

Ms. Gigantes: That is what concerns me.

Mr. Clancy: There is no middle because it is a continuum. If I understand you correctly--and bear with me, because I have not read the coalition's brief--the sense I get from listening to you is that you are talking about an advance, a down payment. We are going to give somebody a down payment on a job evaluation process that may take three, four, five or six years. You told me the coalition has not defined how it will put that quick, upfront money into people's pockets.

Ms. Gigantes: Let us suppose that your proposal is accepted.

Mr. Clancy: If I can make one point, when we came back after lunch we were pointing out to Dr. McAllister that our proposal compares favourably with the results from Minnesota, which came about after the implementation of this job evaluation plan. When people say rough justice or the first quick fix, ours is a little more than rough justice, to be fair. It is a fairly uniform plan and it delivers the money quickly.

Ms. Gigantes: Whatever is left over in terms of a gender bias system--and there will be some left over no matter how we define the first operation of payout. I do not think there is any doubt about that.

Mr. Clancy: A major determinant there will be how much money the government is willing to commit to closing the gap.

Ms. Gigantes: Even in the proposal you have made to us, I suggest to you that people in categories where there is a 55 per cent women component, where traditionally there have been many more women--you can think of a lot of those categories--

Mr. Clancy: There are very few of them.

Ms. Gigantes: We looked at the chart, and there are a number of work groups in the 30 per cent to 60 per cent range. There will be a fairly even split and some of them will be areas where the job has been considered traditionally female. There will be a number of problems like that.

Mr. Clancy: Correct me if I am wrong, but I take exception to the remark that there would be huge numbers of people who had not been taken care of because we have not addressed this question of the wage gap. I am not so sure. I think a mitigating factor in reducing that is the amount of money the government commits to it. Obviously, if it is \$60 million, that is different from \$130 million.

Ms. Gigantes: If you moved back your female-predominated group to 50 per cent, you would catch other people. Some of those people would be in work which, over recent years, has become split fairly evenly between men and women but was traditionally female work, so there would be problems that would

continue. The problems that continued would be those one could measurably say had to do with the skill, effort, responsibility, working conditions comparison that could be made. Your model allows room for that, and I am assuming that it exists. I have a strong intuitive feeling that it does exist.

I am concerned that unless the initial payout is done with some measure of job comparability involved in it, it is a distinct and separate item from the second phase of your proposal, what you call the continuum phase. That phase relies solely upon the collective bargaining process and the individual complaints process without time lines and without a fair understanding by the women who may need to be using that continuum of process, and afterwards the grievance or complaints process, about how they can compare their jobs; in other words, what the model is and how quickly that model is supposed to produce effects for them.

Mr. Todd: If you look at what happens in other parts of our relationship with the employer, you have answered your own question, at least in part. We are not opposed to having time limits or time lines put on these things. The problem with that is if you have a dispute-settling mechanism which ends up in front of a third party, there is a tradeoff between imposing rules on people to address problems quickly and the maintenance of their independence.

If you pass laws like that, the only way you can make them do those things is to say, "If you work in this jurisdiction, you must receive this mountain of information that the parties have used and you have whatever time you want to put down to arrive at a decision." If you do that, you cannot prevent everybody in the world from opting out and saying, "I am not going to operate under that system because it is too onerous and does not pay enough and the time lines are unrealistic." You will either have nobody doing that work or have people who are willing to suffer that unrealistic time line, if it were to be unrealistic, but they are not the top quality people.

That is the problem we have right now with both rights arbitration and interest arbitration. The people are not paid enough for that kind of work and the pressures of the parties on them to operate within time frames causes some of them to drop out.

Ms. Gigantes: That is why a plan is a useful tool.

Mr. Todd: We are not opposed to that but it is not absolute. You can construct a perfect plan and then no one opts into it. No one will agree to do the work under the conditions you have set, which when dealing with pay equity would be an unfortunate irony.

Ms. Gigantes: If, in the complaints portion, you and the Equal Pay Coalition agree that cross-bargaining unit comparisons ought to be operable, either in the public service or in any other job situation, then I find it hard to understand why, within the period of your continuum after the payout where collective bargaining carries forward--the urge to pay equity that you are talking about, that we are all after--you would not be willing to talk about sitting and planning something that is understandable to all parties, the possibility of, or indeed the necessity for identifiable groups to do a cross-bargaining unit comparison and to do negotiations around that.

Mr. Clancy: It will destroy the bargaining unit. Do you understand that?



15:00

Ms. Gigantes: Yes, I understand the sense in which you are saying that. Personally, I do not think it is necessarily true. Further, if you accept it as an operating principle for the complaints process--

Mr. Clancy: We have a fundamental disagreement then, Ms. Gigantes. When I say to you it will destroy the bargaining unit, either you agree or you disagree. If you are saying to me you do not agree--I am the president of a union and the co-ordinator of my collective bargaining department has 25 years as a negotiator in this country, is one of the top negotiators in this country, and we are here saying to you that comprehensive job evaluation will not only destroy the bargaining categories as we now see them in the public service but also, if extended to the private sector, as envisaged in this bill, will do irreparable damage to the unions out there in the private sector and the larger public sector.

Perhaps we could try to explain that. There may be a misunderstanding about comprehensive job evaluation and its impact on bargaining units.

Ms. Gigantes: Perhaps you misunderstand me. I am not suggesting comprehensive job evaluation. You are saying what I am suggesting would result in that, and I am suggesting to you I do not think it would. If you said at the beginning of negotiations for one of your bargaining units that you understood it would be useful to compare one group of jobs within that bargaining unit with another group of jobs in another bargaining unit, I do not think you have to do the whole range of jobs. Part of that is common sense. We are not talking about a complete system that is airtight here.

Mr. Todd: That is where we have to be careful about what we are talking about. We already do right now, in other ways, what you are talking about. For example, if I want to attempt to demonstrate to an employer that somebody ought to be paid more for some job content purpose, I have no problem going to the federal government, to the BC government--not lately, but there was a day when we went there--to the US, to Sweden, to anywhere in the world to make my case. As long as somebody is not saying we have to have a universal grid covering the entire world, so that once we have done that, we are locked in to that comparison for all time, then we do not have a problem.

Our concern is if you say there is one huge universal system in our union, in the broader public sector, in the private sector, in the province, or whatever slice of that you want to talk about. If you are not saying that, we do not have a problem. We will do exactly what you are talking about, as I envisage it, for pay equity. I will come forward and say, "This job ought to be compared with jobs in the following 15 jurisdictions."

Let us take psychiatric nursing assistants. I go to all the other jurisdictions and I say, "Here is how they fit in there in relation to whatever jobs I want to bring forward." I am going to bring forward all the jobs that are paid at a higher rate, all the people who are paid more in those other jurisdictions, and as the employer, you are going to come forward with examples in the same jurisdiction or others where they are paid less. Then we will have an argument about that.

Ms. Gigantes: That is not an equal pay negotiation. That is a comparison of how this jurisdiction treats, say, psychiatric assistants as compared to other jurisdictions.

Mr. Clancy: Compared to what? Computer technicians?

Ms. Gigantes: Resource technicians, pharmacy technicians--

Mr. Todd: The principle remains the same.

Ms. Gigantes: We need to be able to assure ourselves that the comparison will take place within this jurisdiction and, in fact, within an employer category in this jurisdiction called, at least, the public service.

Mr. Clancy: We are suggesting to you that can happen with the complaints mechanism. How strong you want to make that complaints mechanism is up to you. We have some clear ideas about how strong it should be. When we talk about viability, we are talking about things that are not lost in arbitration courts for three and four and five years and about arbitrators who are paid sufficient funds to attract quality people, people who are experienced and have the skills. There is a way to make that system work. If we invest the time and the resources in doing that, you can make it happen. I am working out there at--give me an occupation out there.

Mr. Todd: An electrician.

Mr. Clancy: I am an electrician, or I am working delivering fridges or picking worms. That is nonunionized, and I think my job is comparable to that of the man who is delivering fridges. I am out there picking worms with 100 other women, or canning tomatoes. Let me go before the commission. Make it accessible to me. I do not need a Philadelphia lawyer; I do not want a Philadelphia lawyer. I want to be able to go in and say: "Look, this is what I do every day. We have some criteria established that the court has to follow or the board has to follow, and this is what this chap over here does."

Ms. Gigantes: If one moves from the infinite complexity of the plans proposed in Bill 105 to the infinite number of complaints that we deal with in this kind of proposal, we have to try to find some kind of happy medium. I am suggesting that a bit of planning and flexibility around how we can create plans in that middle portion of what you call a continuum, in either an organized or an unorganized work place, is worth aiming for.

Mr. Clancy: We have looked. To be frank, we spent the better part of a year looking. First, there is no middle ground in our continuum. Right?

Ms. Gigantes: That is right.

Mr. Clancy: There is the model we have outlined here, and then there is a strong complaints mechanism. In your continuum, where you keep talking of the model, we have searched for that. If we could find it, we would bring it forward. It simply is not there. You cannot have the narrow sort of evaluation you are talking about. In order to do it you have to go across the categories or, indeed, across the bargaining units.

Ms. Gigantes: Precisely.

Mr. Clancy: You have five groups of employees represented by five unions in a hospital and you are talking about one system-wide plan under the present bill. What that does is to reduce those five bargaining units, over a very short period, to one, and you eliminate the bargaining units, as opposed to when we are talking about our bargaining categories one through eight.



Ms. Gigantes: It seems to me that within a bargaining unit, particularly at the lower end, occupied mainly by women, you can sit back, take a quick glance through the hospital situation and say, "These are the kinds of comparisons that might be made across bargaining units." We do not have to look at every wage level; we do not have to look at every job description. We should be able to make a comparison between the level of skill, effort, responsibility and working conditions involved in being a psychiatric assistant 2, for example, and that of a resource technician.

Mr. Clancy: All right. Let us take two bargaining units. You have evaluated the nurse in this one bargaining unit with the carpenter who falls in another bargaining unit.

Ms. Gigantes: At a provincial hospital.

Mr. Clancy: No.

Ms. Gigantes: Yes, because we are talking about opposites here.

Mr. Clancy: No, because what we are pointing out to you is that the implications of this bill extend far beyond opposites. It is right there in the bill--

Ms. Gigantes: I understand that.

Mr. Clancy: All right. Let us take the carpenter versus the nurse. There are two different bargaining units, so that after you have done your pay equity evaluation, you bring up the nurse's wages to those of the carpenter. Then this group goes off and bargains a contract; it gets five per cent. That group goes off and bargains a contract; it gets three per cent.

Ms. Gigantes: Why?

Mr. Clancy: Because there are two different employers or the same employer with two different bargaining units.

Ms. Gigantes: In the private sector it is always going to be the same employer.

Mr. Clancy: No, it is not. In a hospital there could be people represented by the Service Employees International Union and there could be workers represented by the Canadian Union of Public Employees.

Ms. Gigantes: I said the same employer. That would be the same employer.

Mr. Clancy: It is the same employer, but they do not give you the same money right across. Sometimes they do; more often they do not.

Mr. Todd: Our point in this example is that if you equate nurse and carpenter, whatever two jobs you want to mention, if they are in different bargaining units and if you achieve pay equity for them after you have brought them on to the same line, as soon as you do collective bargaining and get a different result--and you can get a different result from the same employer in different bargaining units, because they can do what they want. The members of those units can say, "We buy 10 per cent"; the other group says, "We buy five per cent." If you apply those two different amounts to those now equal jobs, they will go like that immediately.

15:10

Ms. Gigantes: Yes, I understand that.

Mr. Todd: You could then argue that pay equity is not being achieved and you have to do it again. If you maintain that, if you simply say, "Let us not keep reinventing the wheel; let us bring them up to that line and leave them there," eventually, in a not very short period of time, you will have wiped out the lines between the bargaining units, and you will have one wage grid for that hospital. So the operating engineers, CUPE, the SEIU and whoever else is in there are now obliged under that--for wages, at least--to bargain together, and they may well not want to do that.

Ms. Gigantes: For compensation. We are talking about a benefits package, we are talking about wages, we are talking about terms of a contract.

Mr. Todd: Wages represent 90 per cent of the value--not 90 per cent, but  $66\frac{2}{3}$  per cent, or something like that, of the value of those negotiations.

Mr. Clancy: The problem becomes that you cannot keep them in step. You can do it once. You can bring the nurse up to the carpenter, but they are in two different bargaining units. In the subsequent rounds of negotiations the only way to ensure that they stay in step is to ensure that they get the same wage increase.

Ms. Gigantes: Under your system, if I understand you, the nurses would go and lay a complaint. Right?

Mr. Clancy: They might once.

Mr. Todd: They might not.

Mr. Clancy: They might once, or they might not. Five years from now they might again, because the carpenter has gone way up and they are doing work of equal value--

Interjection.

Mr. Clancy: Yes or, as has been pointed out, they might go once on the carpenters and then three years later go back and say, "No, not carpenters; we want to compare ourselves to forensic scientists," and they would have that opportunity to go up to the commission.

Mr. Todd: If everybody in a hospital were on the same wage grid--and you have to do that for the purpose of once and for all saying that is the right relationship--after you have done that, you cannot have separate bargaining-unit bargaining for wages. If you have five unions, you may have five different results, whereupon the one wage line you have just finished establishing fragments into five, and immediately the pay equity arrangement, if you like, is breached. You say, "Let us put them all back together again on to another line," and then you have another round of wage bargaining which produces five different results again.

Clearly, no system will sustain that, and the bargaining agents who have fought long and hard to become the representatives of those groups are not willingly going to give up that jurisdiction to the artificial imposition of a system of the kind that is being suggested at the moment. They just will not do it. The politics of it are such that they will not.



Therefore, we are saying you have to leave the integrity of the bargaining unit alone and have a complaints-based system where--and I still say the parallel is with making classification grievance arguments--I can ring in any jurisdiction I want to bolster my argument, so can the employer and so can we both in front of an arbitrator who discounts whatever he wants to discount, accepts whatever he wants to accept and says, "Your complaint that you are comparable with these jobs over here is not well founded, or it is not founded at all, and I am rejecting it" or "I am accepting it in part" or "I am accepting it wholly."

The way to achieve the timeliness factor is to have some kind of a Pay Equity Commission so you have people who do this sort of thing all the time, a jargon and a jurisprudence build up and a timetable is built into that process. As I said before, that is balanced. It has to be balanced against rules that people cannot live up to, that are so impossible that nobody joins in. They have to be worked out on some kind of reasonable basis, but we have no problem with that. In fact, we are in favour of it so that justice flows at a fairly rapid pace.

One of the problems we have right now, for example, in our rights grievance system is that it takes a long time for your case to come forward and be heard. Even if you win, if there is a big gap like that, you lose interest. Even if you win at the end of it all, it takes away from you; you shrug and say, "So what?" We have no problem with a foreshortened timetable. It is acceptable.

Mr. Clancy: In the example I was talking about, it is like an outside setting. This bill is important because if there is a second bill, and so on, those principles presumably will be carried through. I was using the example of the outside two or three different bargaining units in one work location. If we look internally at the public service, which is broken down into eight wage categories, and if we cast our minds back to 1979, the correctional officers, the jails, the correctional centres in this province went on strike.

A lot of people thought that strike was about money, but that strike was about having the right to bargain in the wrong category. They went out on strike because they wanted another category. That became our ninth bargaining category. We now have eight because our office and clerical are together in the public service in the new OAC category.

People feel very strongly about the categories they are in. When you try to bring in the evaluation, you end up doing away with those category systems for the reasons Andy Todd mentioned. You can do it once, but next year when you go back to the table, in order to ensure that everybody stays in lockstep--once you have done the pay equity comparison, in order to make sure the resource technician and the nurse stay in lockstep when they are in two different categories--you have to ensure that both categories get the same wage settlement.

Ms. Gigantes: I do not want to appear frivolous, but it would pay men in public service or any other place of employment to figure out a way for the job categories in which they negotiate to cover only men. The truism you gave us when you started your presentation this morning about the more women you have in your bargaining group--

Mr. Clancy: But what about the men?

Ms. Gigantes: --the lower the level of pay you get can be taken to the point where we can understand quite clearly that it is a benefit to certain groups not to have cross-category bargaining; in other words, the groups that are ahead and are likely to stay ahead.

Mr. Clancy: It is not a very neat analogy.

Mr. Todd: First, it is equally true, and I would be doing the opposite. I would be trying to get into one of the categories where I am going to benefit from this system. Second--

Ms. Gigantes: You would be stepping backwards.

Mr. Todd: No. It all depends on which one I pick. Obviously, I am going to pick the one that is going to have the greatest impact.

Ms. Gigantes: No, you would pick the one that now has the highest level of pay where there would be an impact.

Mr. Todd: You might be right if you carried on without any pay equity, but not if some form of pay equity passes.

Ms. Gigantes: We will quibble about that.

Mr. Todd: In any event, the more important point is that the categories as they are now structured are not divided up on the basis of gender. They are divided on the basis of occupation. Because of occupational history, some of that does produce in part the result you are talking about, which may be an unintended result or may be part of what you might say is the way it was. However, that will change as a result of this. It will radically alter if you do both parts of what we are proposing.

Ms. Gigantes: It will change less. We could decide to see upfront money, as you propose, which I think is a good idea. But it would change less the more we restrict likelihood of comparison across bargaining units. I am not talking about a lockstep; I am not talking about an airtight wage grid or anything such as that. I am talking about the mechanisms that we provide, whether in this or any other bill, to allow ease of comparison across bargaining units or indeed between a bargaining unit or units and unorganized groups. Is that not true?

15:20

Mr. Todd: Personally, I think we are arguing to agree on this point. We have no difficulty in making comparisons with anybody in the world to make the point about comparable value, and we will do it. It will flow automatically. We do it now for other reasons. You do not want to limit yourself in making your point by saying, "I am only going to argue this narrow part over here." What you want is the entire universe. When we talk about vacations, we do not limit ourselves to Ontario. We go to Australia and every other place we can find to demonstrate that vacations in other parts of the world are better than they are in Ontario so as to say that Ontario ought to be getting into whatever the norm or the average is or above average or whatever the argument happens to be.

If an employer says to us, and they do, that we should look only at what happens in Ontario and that ought to be the law, we argue against that. In the same way, if somebody says to us that we can only look for comparable work at



the job in the next office, we will argue against that. We would say that what happens in the next office is irrelevant, that we want to argue about the office down the hall, in the next building, in the next county or in the next whatever.

We agree to that extent. What we do not agree with is ending up with a system where everybody in OPSEU, to take our example, which is now subdivided into eight wage-bargaining categories, ends up in one continuous salary line, on which everybody in the bargaining unit can be found and on whose behalf wage bargaining goes on, on that basis. In other words, we would bargain on behalf of all 50,000 rather than on behalf of the eight different wage lines that we have in the Ontario public service. For a whole bunch of reasons, not all of which we can go into today, we are not interested in assisting them to have one wage line.

In the same way, you will find no acceptance for that in the broader public service or the private sector for the same reason. Our wage bargaining categories are the equivalent of a bargaining unit in other jurisdictions.

Ms. Gigantes: I understand, but when we look at Ontario, we are talking about only 20 per cent of women being organized. When we look at the private sector, we are dealing with an entirely different setting, in which most of the activity on behalf of equal pay will appear. I feel I have taken a awful lot of time and you have been most generous, Mr. Chairman. I have enjoyed the discussion. Thank you very much.

Mr. Charlton: I am curious. I was asking my last question before lunch and you indicated you would table some information with us in terms of the definitional question I asked. Can I follow up on that and ask whether you can do that today? Are you prepared to provide us with some--

Mr. Todd: We can speak to the principle of that. I am always loathe to negotiate language with 50 people. It usually works out better if you work up a graph and show it to people and argue over that language. We are not in that position today. The principle we seek is to change the bill to enable the parties to do these two things we are talking about: pay up front and then do value comparison after the fact. We have drafted the legal changes that would require and we would be quite happy to sit down in whatever forum you want to go over the exact language. If I can defer on that for a minute, this is Ms. Lennon, our counsel, who has done that work and can confirm that for us.

Ms. Lennon: Let me give you a brief outline of what the structure would be. For the negotiated pay equity plan, we are proposing that our model be an option. For unorganized and organized groups that are happy with the structure Bill 105 currently provides, that would still be available, but our model could be an option. A bargaining unit could opt out of the current parts II to VI and adopt a negotiating structure that allows for this model. That is the first type of amendment. It is simply an additional part into which people can opt. It is quite simply done.

With respect to the complaints mechanisms, we are talking about amendments to clause 25(a) and section 26, which allow for complaints about equal value, not just about pay equity as defined by the act.

Mr. Charlton: There is just one other thing that flows out of that. You mentioned it after lunch and it had been mentioned before lunch. That was when you were answering a question from over here. I cannot quote your exact words but you said something to this effect: "We have a different view of what

pay equity is and the definition as it is currently in the bill is not what we believe pay equity is all about. We are talking about equal pay for work of equal value." That is the last thing I am asking. What is the ultimate definition that we have to get into the legislation to accomplish what you tell us you want to accomplish, which is the quick fix up front and then a negotiated process to equal pay for work of equal value? That is what I am asking for. We all agree that the definitions that are there do not accomplish that. What do the definitions have to be?

Ms. Lennon: Our draft puts that up front. Pay equity in the definitions section means equal pay for work of equal value without discrimination on the basis of sex and everything then flows from there. There are more limited definitions for purposes of the quick-fix section. Let me add that your analogy may be wrong when you are talking about equal pay and how our proposal compares to the proposal of the Equal Pay Coalition. We have perhaps unfortunately chosen the same term that they have and called it the quick fix or rough justice. Our negotiated equal pay plan or pay equity plan is really more comparable to what is currently in Bill 105 and provides for job evaluation.

Ms. Gigantes: I understand that.

Ms. Lennon: We view that as having approximately similar costs, although we would require more money than is currently being made available for that, so there would be more limited definitions and more limited goals for the quick-fix section.

Ms. Gigantes: I understand that quite clearly in terms of the magnitude of what you are proposing. The initiative has very much the same motivation and it provides that step first, another portion and then a complaints mechanism. In those senses, I find it useful to compare them with the approach that we may take.

The Acting Chairman (Mr. Partington): Are there any other questions?

Ms. Gigantes: I have one other tiny question. You suggested this morning in talking about the upfront payout moneys that it might be possible to think in terms of negotiating with the government--presumably this committee could be part of the process of discussion around that--as to how you might put a cap on salaries, which would be whatever amount was being discussed in a negotiated manner. I am wondering whether you have looked at any caps and what the effects are.

Mr. Todd: In the discussions we had with the employer, that was not a major concern or problem. We simply identified that, but then the question was put, "Are you not proposing a strictly arithmetical formula for the first payout?" In response to that, one of the things that might be negotiated would be this business of a factor called "absolute salary amounts." That is as far as we have gone with that. It is pretty offhand at the moment. There has been no great study done on that.

Ms. Gigantes: Would you have a target number of people whom you would want to get covered in that original round? Have you set any kind of target?

Ms. Greckol: Everybody who is in an occupation that is more than 60 per cent would be somebody who initially would be subject to a salary increase in the first round. It would be a question of then working out what portion. I



think what Mr. Todd is saying is that you work out that portion according to what you can foresee as your eventual plan.

Ms. Gigantes: I understand. You talked about a rolling average, which was your line. If you compare the average man's wage and the average--

Ms. Greckol: It was not really a rolling average. I was trying to make it more comprehensible to--

Ms. Gigantes: If you compare the average male salary in the public service to the average female salary or even to the median line, you get amounts on which you can put a number. Within the \$130 million, if you start to deal with those amounts, I am curious about how many people would end up getting caught in that first swoop of the assist.

Ms. Greckol: I believe the figure mentioned this morning was that there would be 29,000 people covered. Am I wrong in that?

Ms. Gigantes: There has been some confusion on that. I understood there were 29,000 women in the public service.

Dr. McAllister: No, there are approximately 31,000 women in the total public service. There are 29,000 employees in predominantly female groups of jobs and 24,000 of those are female.

Ms. Gigantes: I see.

Ms. Greckol: That is 29,000 in the predominantly female group of jobs.

Dr. McAllister: More than 60 per cent automatically included under our bill.

Ms. Greckol: Working from that figure, that is the group of people who immediately start to be covered. Then chop it up in any variety of ways.

Ms. Gigantes: Thank you.

The Acting Chairman: Thank you very much, ladies and gentlemen, for your very thorough contribution to our deliberations.

Mr. Clancy: Thank you very much, Mr. Chairman.

The committee adjourned at 3:32 p.m.





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

THURSDAY, OCTOBER 2, 1986

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Clerk: Mellor, L.

Staff:

Ward, B., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy  
Minister, Labour Policy and Programs

Klein, S. S., Policy Adviser, Policy Branch, Labour Policy and Programs

From the Canadian Federation of Independent Business:

Andrew, J. M., Director, Provincial Affairs--Ontario

Botting, D., Executive Director, Provincial Affairs

From the National Action Committee on the Status of Women:

Cohen, M., Vice-President

Ritchie, L., Member, Employment Committee

McDermott, P., Member, Employment Committee

Millar, E., Representative, Public Service Alliance of Canada



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, October 2, 1986

The committee met at 10:12 a.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

The Acting Chairman (Mr. Partington): I would like to draw members' attention to a document they have before them titled, Data Regarding Pay Equity, Bill 105, which was prepared yesterday in answer to some questions raised by Mr. Charlton.

The first presentation today is by the Canadian Federation of Independent Business. The brief is exhibit 20 before you. Judith Andrew and Dale Botting are here representing the federation. Perhaps you could carry on. You have an hour. After your presentation, I hope we will have a chance to ask you some questions.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

Mrs. Andrew: I am the director of provincial affairs, Ontario, for the Canadian Federation of Independent Business. My name is Judith Andrew. This is Dale Botting, our executive director, provincial affairs. If I may, I would like to read our statement into the record.

The primary consideration of justice is that substantial fairness be exercised by government in its compensation to employees in view of the current fiscal position of government, the tax load on citizens and on business, and the comparability of pay for government workers with employees outside of government.

These are the main conclusions of the Canadian Federation of Independent Business with regard to the current proposal for comparable worth in the public sector. On behalf of CFIB's 76,000 independent member firms, more than 36,000 of which do business in Ontario, we appreciate the opportunity to comment on Bill 105, the Public Service Pay Equity Act. CFIB's perspective on this bill is the result of our studies of both the application of the comparable worth principle and of the dynamics of pay determination in various public sectors, including that of Ontario.

The wage gap and justification for proceeding: Our understanding is that the gap in average wages for women in the public sector is somewhat less than in the private sector. Women earn some 78 per cent of the pay given males on average. These gross figures are misleading in both cases, for when they are standardized for hours worked, the gap narrows considerably. In the private sector, women earn 83 per cent of male average pay based on full-year equivalent jobs.

At this point, I would like to refer you to the other document in your kit. Table 5 on page 11(a) gives an analysis of this pay gap, standardized for hours worked. That is really a fair way of looking at the pay, because

generally women work fewer hours than men. You will see the female-to-male percentage is about 83 per cent and it does not vary by size of firm in the private sector.

In the public sector, the percentage would most likely be higher than this 83 per cent because the initial gap is smaller. If the public sector is similar to the private sector, 20 per cent to 25 per cent of the gap is attributable to certain productivity characteristics--education, experience and so on, and 10 per cent to 15 per cent could derive from occupational segregation. It is this latter item that comparable worth is intended to address.

Full analysis of the wage gap in the public sector is necessary for any enlightened discussion of the subject. To date, the government has chosen not to make this basic data public. Full analysis of the wage gap and indeed the average salary data for each job and by gender ought to be reported annually to the public. This would allow more public discussion of both equity within the public service and the key issue of public-private pay equity. We return to this point below.

Apart from the inadequate problem identification in this instance, assuming there is a wage gap stemming from the concentration of women in segregated occupations, surely alternative policies would be more beneficial in attacking the real problem--that women are not well represented across the range of occupations. Perhaps it is time for an evaluation of the internal efforts made to help women assess their career goals and their methods to attain them. One must certainly wonder about the opportunity cost of focusing all the effort on an administrative system designed to produce the pay results that would be in place if women had advanced their careers.

Justice for public sector employees: CFIB rejects the notion that government as employer can be abstracted from government per se. Government setting policy as an employer must actively remember its overall responsibilities to the common goal. This is not to say the government should perpetuate pay inequities, but it does require that pay inequities be redressed within the parameters of current salary spending limits which have been justified to the Legislature.

It is alleged that certain jobs in the public sector are underpaid. Within a given spending limit, the corollary is that, comparatively, other jobs are overpaid. The government need only apply its chosen evaluation system to identify which jobs must be red-circled and which jobs require an increase. Unlike smaller, independent firms, the government already has detailed personnel systems and specialists to undertake this kind of work. It should be a relatively simple matter to reallocate the pay envelope in an equitable fashion according to one of the job evaluation systems available.

Justice to the private sector: The pay increases implied by Bill 105 are not compatible with fairness to private sector workers and businesses. The tax load on citizens and businesses should not be such that employees of government who serve the public are more generously remunerated than those citizens who pay for them. Yet this is most certainly the case in many instances. Many independent business owners and their workers view the jobs of public servants as, in common parlance, cushy. Businesses operating near government offices regularly complain of having their trained employees kidnapped by governments which pay exceedingly well. The workers are attracted by the relative security of tenure, the comprehensive benefit packages and the paycheques competitive with the large firms--200 plus employees--on the government's roster for private sector pay comparisons.



CFIB's survey data confirms this point as well. Our 1984 Hard Facts survey revealed "competition for your workers by government" to be an important factor affecting pay rates for employees. More recently, the 1986 Ontario provincial survey identified "government salaries and benefits affecting the labour market to be a key problem." This item was marked by one third of more than 5,000 respondents and ranked third in our members' identification of the most important problems facing their businesses.

10:20

CFIB has assembled some concrete evidence of these pay excesses using the federal Department of Labour's publication, Wage Rates, Salaries and Hours of Labour. For Ontario, we received actual average salaries for matched positions on the Labour Canada survey as at October 1, 1981. Of the 21 office occupations compared--and, at this point, I refer you to the table appended--12 were paid at a rate greater than the private sector. The 12 overpaid positions embrace 75 per cent of the occupations. Only four of the 12 had more than a 10 per cent advantage over their private sector counterparts. To elaborate, you can see from the table that more than 8,000 employees of the 11,700 compared were paid more than 5.1 per cent more, whereas only 470 employees were paid more than five per cent less.

The Acting Chairman: Excuse me. What table is that you are referring to?

Mr. Botting: It is at the back.

Mrs. Andrew: Yes. It is appended.

I will reiterate: for the employees paid in excess, more than 8,000--the sum of 5,800 and 2,200--were paid in excess of five per cent more whereas, on the right-hand side of the table, for those paid less, only 470 were paid more than five per cent less.

While this evidence has not been updated for the Ontario government, the general picture of a blended public administration advantage over the private sector has continued. At this point, I emphasize that it is within your power to update this comparison. These actual average salaries are not generally available to anyone outside of government, but the Labour Canada survey is done every year, as at October, and you can ask the Civil Service Commission to update this information right to the present. We are quite sure the picture will not change very much.

Turning to Ontario's deficit, fiscal irresponsibility. Ontario's deficit for fiscal 1986-87 stands at \$1.5 billion. While this government did not begin the deficit spending in Ontario, it has continued the pattern. This has happened despite increased revenues associated with recovery from the recession and received as a consequence of the federal tax hikes. However, the government discovered early in its term that continued overspending does not go unnoticed by the New York rating agencies.

Our own view is that if ever there is an opportunity to trim the deficit, it is during a period of relative prosperity. Yet Treasurer Robert Nixon will affirm that even the increased sums available to him will not stretch over the myriad of worthwhile purposes he would like to fund.

The Bill 105 proposal to allocate an additional \$88 million per annum for government employees' salaries must be considered not only in the light of

justice to employees but also in view of the requirement to provide justice to citizens as taxpayers. Against the backdrop of continued deficit financing, this proposal is a clear example of fiscal irresponsibility. More disheartening, however, is the plan by the opposition party and the third party to outdo the government in fiscal mismanagement by extending the purview of the bill to a much broader swath of the public sector. This approach would escalate the cost to some \$600 million, funds which are simply not available to the Treasury.

Next is job evaluation and its inadequacies. The proposal for pay equity is founded on the reliability of job evaluation methodologies. Unfortunately, these systems can produce widely variant results. For example, Wisconsin's public sector pay equity plan dictates that nurses' jobs are worth 50 per cent more than electricians'. In Minnesota, they are deemed to be worth 20 per cent less.

Results of a study of job evaluation techniques showed that in the best case, there is only about a 50 per cent probability that two raters using the same procedures and with access to the same job information will produce the same classification decisions. This study also produced evidence that most plans contain considerable measurement redundancy. In fact, the job characteristics reduce to a few factors. Additionally, the study evidence is quite clear that different methods produce different results. Evaluation plans are not interchangeable.

Summarizing, job evaluation results are highly susceptible to errors on the part of evaluators and the choice of the evaluation instruments, or the choice of the scoring procedure for a particular instrument can have a major impact on results. Consequently, the feasibility of using job evaluation results as the governing criterion of the relative worth of jobs is highly questionable.

The notion that jobs have an intrinsic worth recasts the role of job evaluation from a procedure of generating an acceptable wage structure to one of a precise measurement system, a role job evaluation procedures are ill-suited to fill.

As for the role of the public sector unions, a valiant attempt has been made in parts III and V of Bill 105 to involve each bargaining agent in the determination of comparable worth plans. This is entirely inappropriate since it is at the hands of these same bargaining agents that so-called inequities for female-dominated jobs arose. This approach to comparable worth is fraught with the same failings that legislators profess to be attempting to erase.

To what purpose would legislators design a law that allowed the unions to bargain over how job content is evaluated? Why would the demarcations of the bargaining units be continued for comparable worth purposes? Most certainly, each bargaining agent will be prepared to negotiate a job evaluation system with relative values similar to the status quo, except involving more pay overall. Then, the requirement to negotiate across bargaining units will be extremely difficult because each group will want to preserve the historical differentials it has bargained.

To be blunt, there is no role for negotiation in these matters, and the maintenance of bargaining unit demarcations is inappropriate. If the intention is to remove bias, then one of the consultants in the comparable worth field ought to be asked to interview the employees, record job content and apply the system. There is nothing to bargain in this exercise. Job content is



well-defined, and the system embodies certain factors and weightings which determine value. As long as the pay commission rules that it is unbiased, it ought to be applied to all jobs, regardless of bargaining unit divisions.

These are the broad outlines of our concerns with Bill 105. However, we have several additional items which I would be happy to outline in response to your questions.

As I understand it, you received a presentation earlier this week that was entitled Too Little, Too Late. Ours could be coined Too Much, As Usual.

Mr. Mitchell: I will go back to an issue that arose the other day during presentations. It still bothers me. I want to make it clear that I support the principles that we are discussing here. What bothers me is it came about the other day--and I think it holds true--that when unions negotiate with their employees, many negotiate a percentage increase which could be different for various classifications they have within the unions.

If we go through this process and raise the salaries, as is proposed in the bill, and the unions still continue to bargain on the basis of percentage, does the gap simply continue to exist? Someone said the other day that this bill will hamstring the bargaining process. I see it as really doing that, literally. If we are going to go through this process, then the union, to protect those very workers it is concerned about, would not be able to bargain on that percentage basis. Otherwise, if they go four per cent for this category, 10 per cent for this one and so on, after they have already adjusted the salaries to be equal, then surely that same differential will grow and you will never end it. Am I wrong in that assumption?

10:30

Mrs. Andrew: I agree entirely with your analysis. You simply will not see the bargaining take the salary structure back into the same rut it was in before, if you can describe it that way.

Mr. Mitchell: Let me ask you this, too. I got kind of upset with an answer from one of the groups the other day. One of the unions suggested to me that merit should not be a consideration in jobs. Mr. Wiseman began the questioning on the basis of merit. He asked, "What do you see a bill such as this doing in the way it is worded?" One of the unions said: "We are trying to get rid of the merit principle. We are trying to bargain that away." If you bargain away the merit principle, where does ambition go?

Mrs. Andrew: You are quite correct. Merit is a very key item; it is key to our members in terms of the way their businesses actually function. If one cannot reward merit in job performance, then there is no incentive for an individual to try to do better at his or her job. The way pay equity is defined here, it is defined very narrowly on the four items of skill, effort, responsibility and working conditions, with no consideration for the various other criteria that differentiate between somebody who is a wonderful employee doing an excellent job and someone who is just doing the minimum.

Mr. Botting: Mr. Mitchell, I think there is another criterion missing. You mentioned value determination in section 4 of the bill. You refer to the lack of reference to merit. One of the other concerns we would have--and if I was a trade unionist I would also have--is that the word "experience" is not in section 4 in terms of value determination.

A biological fact of life is that women suffer absences from the work place because of maternity leave. In fact, we have examined the experience and duration of women in the civil service and in other jurisdictions. I will cite Manitoba as an example, although I am sure a similar analysis would be found in Ontario. We found that men stay, on average, 44 per cent longer in the civil service than women, if you examine the experience of the male population and the female population. That, too, is a factor that is not counted here. If I were a trade unionist--and seniority clauses are important to me--I would be concerned about that.

Ms. Gigantes: If I were getting paid at female rates in the Ontario public service as opposed to male rates, I could stay in my job longer if I were a male. I have not said that properly, but there is certainly more incentive. You can create that in terms of the pay people get.

To go back, I noticed in the presentation you made to us today that you started out with an analysis of the wage gap which you did not address in your submission to the consultation panel at all. I was wondering about that. In the consultation panel discussions, people were called upon to address the green paper on employment equity.

In that green paper, on page 10, the figures that are presented show that the wage gap--as has been referred to in these hearings and presented to us as our working review, as it were, when we tackle this problem--which is identified as full-time earnings in the private sector, is 62 per cent of men's wages, and in the public service it is less than that. I have forgotten the exact amount. That certainly does not jibe with the revised figures you presented to us on page 1 of your brief today. Could you comment on that?

Mrs. Andrew: There are some inaccuracies in the green paper. That is not the only one. One of the problems with the data in there is that they date back to 1981, which is very problematic in terms of looking at this question in 1986, almost 1987.

Ms. Gigantes: I wonder whether you would later care to provide us with a comparison of your estimates for 1985 compared to the results--

Mrs. Andrew: There also does not seem to be any sources in there. We have identified our sources.

Ms. Gigantes: How about the earnings of men and women in 1981 and 1982 from Statistics Canada with a catalogue number?

Mrs. Andrew: I do not believe they are full-time. I do not believe it is adjusted for full-time or part-time jobs.

Ms. Gigantes: Do you think it is a lie when it says full-time and it does not cite Statistics Canada in 1981-82?

Mrs. Andrew: I will look at it again and give you an answer. I would like to address the first part of your comment concerning it being more advantageous to be a man in the public service. The statistics I presented earlier showed that the advantaged occupations embrace 75 per cent of the office employees. In fact, in more detail, file clerks at that time earned 25 per cent more than in the private sector. Junior office clerks were earning 16 per cent more and senior office clerks almost 12 per cent more.

Ms. Gigantes: I would very much like to know how you have done that



comparison. When you are looking at the Ontario public service, you have another problem. On the one hand, you are addressing a bill called the Public Service Pay Equity Act and on the other hand, you refer constantly to the public sector, so I do not know when you do your comparisons whether you are doing the public sector as we have known it in legislation in Ontario, which is what we call the public sector here on this side of the House, or that sector which had its wages restrained in 1981.

Mrs. Andrew: No, not the broader definition. We received from the pay research section of the Ontario government actual average salaries for matched positions in the Labour Canada survey, which comprised several hundred thousand employees surveyed across the country. Matching those actual average salaries to the Labour Canada survey produced these differentials.

I would be happy to go into more detail about the methodology. You can check it, and I am certain that the pay research section can update these figures for you and bring them right up to the present. I would like to see that. We indicated in our brief that the data ought to be publicly available for these key discussions about public sector and private sector pay equity, as well as simply internal equity within the public service.

Mr. Charlton: As a supplementary on that, if the comparison figures you have used in your table are correct, they certainly call into question another one of the comments you made about public sector unions being the problem in terms of the inequities. What those figures reflect, in fact, is that the public sector unions are doing the job in terms of gradually reducing that gap. That is why the comparable salaries in the public sector are higher than they are in the private sector. The gap of inequity is wider in the private sector.

Mrs. Andrew: I can respond to that by saying that comment concerning the public sector unions concerns the decision either to stay with collective bargaining as we know it now or to revert to a system of pay administration that spells out the answers without any opportunity to bargain. If you believe in these systems, if you believe they are unbiased and produce fair results, then either you go with the systems or you choose to go with collective bargaining as we know it.

Mr. Botting: I am also having trouble understanding the logic in your questioning. As small business owners, what we are trying to state is that an alternative definition of pay equity is the phenomenon of corporate kidnap and the competition we have for labour, with the gap that already exists prior even to the implementation of a pay equity scheme in attracting quality staff to our firms, as currently is the situation. Further incrementality is indicated in the bill and, as section 9 of the bill indicates, can only be incremental and not an adjustment going the other way. It will just exacerbate that gap.

Mr. Charlton: To demonstrate that for us, you are going to have to do more than you have done here. What you have done here is compare female-dominated jobs in the private sector to female-dominated jobs in the public sector. Do the same comparisons for us of male-dominated jobs, and we may be able to see some of what you are saying. If you cannot show us the same kind of gap in male-dominated jobs, then I have to say that the analysis you are trying to put forward here is wrong, the public sector has started to address the problem, the private sector is falling behind and the marketplace is not working.

Do us the comparison of the male-dominated jobs in the private sector compared to the public sector and show us the same competitive gap that you are talking about here and we may be able to have some discussion about it. If you cannot show us that kind of gap in the male-dominated jobs, then your whole thesis is full of holes.

10:40

Mrs. Andrew: I reiterate that these data are not generally available to organizations such as ours or to anyone outside the public service. They are quite confidential.

Mr. Charlton: I am sure though that if you got it for one, you can get it for the other.

Mrs. Andrew: To be honest, the fact that we received the data was probably a mistake on the part of the person who gave it to us.

Mr. Charlton: Let us try for another mistake.

Mrs. Andrew: All right. It is within your power to request the data and do these comparisons.

Mr. Botting: Frankly, we appreciate the question.

Mr. Charlton: The figures we have already received do not show what you are saying. That is what we are saying.

Mr. Botting: We would welcome the opportunity to have the data. Our problem has been that we had to work hard to get the data we have.

Ms. Gigantes: It would not surprise me in the least to find that women in the public service, who tend to be organized at a much higher level than the rest of the employment field in Ontario, would have better wages. The whole point of being organized is to improve your rates of compensation, your working conditions and so on. I do not find that surprising in the least.

However, I find it annoying to have a presentation in which I am told we are dealing with the public sector and it is clear there is a difference between the public sector and the public service for purposes of analysis of this bill. We have a brief which constantly confuses the two and treats Bill 105 as if it already covers the public sector, which it does not.

Mrs. Andrew: No. You can see from the title of the table that it is the public service.

Ms. Gigantes: I am not just talking about the data. The comments that go back and forth throughout the brief are very difficult to follow because of the inexactitude of the expression.

Mrs. Andrew: The excesses exist elsewhere in the public sector as well.

The Acting Chairman: Ms. Gigantes, could we get back to you after we allow some of the other committee members to ask some questions? We started with you.

Ms. Gigantes: I have asked one question.



The Acting Chairman: We have a deadline, which we did not have yesterday. I wonder whether we could get back to you after Mr. Polsinelli gets a chance to ask a question.

Mr. Polsinelli: Thank you, Mr. Chairman and Ms. Gigantes. I appreciate your co-operation.

Ms. Gigantes: You are not welcome.

Mr. Polsinelli: First, with respect to Mr. Mitchell's line of questioning, I point out that after pay equity has been achieved as defined by the bill, there is a complaints mechanism. Section 26 of the bill provides that if the employer participates in gender-biased compensation practices after the bill's five-year period, any employee can file a complaint and the Pay Equity Commission would force the employer to terminate the practice and take whatever action is necessary. Once pay equity has been achieved under the bill, if there is a disparity in the wages after that point, that disparity should not be a result of gender-biased discrimination practices.

That being said, I thank you for your brief. You have fairly well keyed in on the public misconception of civil servants, that is, that they are underworked and overpaid. That is a common public perception. I have not seen that to be the case myself, but the public generally believes that.

Does your organization believe a problem exists? Does your organization believe there has been a societal or systemic undervaluation of women's wages strictly because they were women and for no other reason?

Mrs. Andrew: We believe women are in segregated occupations for a variety of reasons. One concerns early socialization from childhood. Women have been directed towards certain types of jobs. There may be some discrimination involved in the career opportunities they have had. We believe the average pay differentials stem from those kinds of factors and the way to attack them is to try to attain better integration of women across the field of jobs available. That is why we vociferously oppose this kind of policy; it does not attack the real problem.

We suggested in our brief, for example, that efforts ought to be made to help women in the public service identify their opportunities and what training may be required to seek those opportunities and to try to get better integration of women across the public service instead of simply trying, by administrative fiat, to adjust their wages to levels they would be making if they were more represented.

Mr. Polsinelli: So you actually believe a problem does not exist as we have defined the problem to exist. You believe it is a problem of occupational segregation and women should be looking for better jobs.

Mrs. Andrew: Partly by choice and partly by discrimination, I suppose, and by early socialization, if you count that as discrimination.

Mr. Polsinelli: In looking at whether the problem exists, would you not agree that an executive secretary to a manager in a large corporation who basically runs the office, answers the phone, keeps the manager's schedule and does tons of work, almost as an assistant manager, should be paid as much or more than a parking lot attendant? Do you not believe in the principle of comparing the relative worth of jobs?

Mrs. Andrew: The principle of paying according to value is one that people strive for. However, it is the way the value is determined. To determine it by a pay administration system is one way. We believe that if there is an excess of executive secretaries, no matter how competent they are, that market factor ought to play a role.

Mr. Botting: This is a debate over means, not ends. In saying that, one cannot help but smile a bit at the whole concept of the bill, in recognition of the fact that if the government of the day or previous administrations were sincere about pay equity, they did not need this bill either now or in the past to deal with the disparities you have just alluded to.

There are many jurisdictions elsewhere where pay equity principles have been integrated into the collective bargaining process without the need for a bill. I think that is worth raising as a comment.

Mr. Polsinelli: That is a very valid point, and if we had progressive employers in the private sector and if we had had a progressive government in Ontario, perhaps we would not have needed this bill. I concede that point to you.

The fundamental question we have to ask ourselves here is, "Do we believe a problem exists?" Obviously, your definition of the problem is different from ours. I guess you do not believe there is societal and systemic undervaluation of women's work, strictly because they are women and not because their jobs are worth less.

Mr. Botting: Again, in our brief, early in the presentation, we concede that there is an element of inequity to the gap because of some discrimination within comparable work evaluations, but the more important point I think we should discuss further is one of allocating scarce public resources and the degree to which efforts are applied in dealing with one facet of the problem vis-à-vis the other.

Mr. Polsinelli: That is a valid point, but from my point of view, that discussion does not even come into the picture. If we have not identified that a problem exists, why discuss the allocation of resources?

The Acting Chairman: Excuse me, Mr. Polsinelli. The gentleman did clearly say there is an element of discrimination. He did not say there is not.

Mr. Botting: No. I refer back to the brief. I believe we say on page 1 that 10 to 15 per cent could derive from occupational segregation.

The other point I wanted to make, though, is that \$88 million is a lot of money, and the question is one of opportunity cost. We would like to put this government on guard, if you will, in terms of follow-up monitoring to see whether \$88 million to perpetuate this institutionalized problem is at the expense of better vocational guidance for women students in our elementary, secondary and post-secondary systems, whether it is at the expense of other ways to integrate women into higher classification systems through proper affirmative action in the civil service and so on.

That will be a very interesting follow-up analysis that I challenge everybody in this room to be cognizant of, well beyond the potential



establishment of this bill. To apply \$88 million to only one facet of the problem, we suggest, raises the spectre of opportunity cost.

10:50

Mr. Polsinelli: One final comment.

The Vice-Chairman: We have three more people on the list and we have about 10 minutes. You have had a substantial amount of time.

Mr. Polsinelli: That is a valid point that comes into consideration only once you have determined that a problem exists. If you have determined the problem exists, that there is systemic undervaluation of women's work, then the question becomes prioritization and how you allocate your resources.

Mr. Wiseman: I would like to thank the group for coming. Being a small businessman, I can sympathize with a lot of what you are saying. I was glad to hear what you said to my colleague about merit. The other day I asked a group about it and they felt they wanted to get away from merit pay. I know there are certain people in my little organization who put more effort into helping and trying to make a success of our business than maybe some others do; yet basically they do the same thing. One leaves right at quitting time; the other one will stay a little bit longer. One is there more often; the other finds more reasons to be off for sickness or whatever.

I would hate to see the day when I could not recognize one employee who I think has been better than the other two or three. I would hate like the dickens to have to fire the other two or three because they were not coming up to the expectations I had of the first one.

I do appreciate your coming. I know that in government we set a standard of pay, whereas a lot of people in the private sector who have to scrounge around and make their bucks the hard way cannot seem to pay the same wages. That gap is going to get wider as we get into this bill. I see it in the small town I come from, where people compare Hydro employees who get the same across the whole province to somebody working at Brown's Shoe or International Silver, or whatever, doing secretarial work; or even in the case of the girl in my own office or in the Ministry of Agriculture and Food where wages are so much higher than any industry jobs feel they can pay and still be competitive.

We have heard from a lot of unions. It is good to have small business coming in to represent small businessmen like myself and others who see a few problems with the bill.

Ms. Hart: You have conceded there is some element of undervaluation for women's work. Can you answer why small business or government needs to be subsidized by women?

Mrs. Andrew: I do not think we conceded that point. I believe the pay differences stem from either choices made by women voluntarily--perhaps to do with their home life, but to accept certain jobs that accommodate the other aspects of their lives--or because of earlier socializations. They really have not been guided to think of any types of occupation other than ones where we find women congregated.

There are recent surveys that show young girls still expect to get married and live happily ever after. That kind of perception is clearly

inaccurate when we look at the divorce statistics and the fact that so many more women are required to provide for themselves. Yet we are perpetuating that kind of socialization. That is why women are congregated in these occupations. Because there has been an influx of women into the labour market, into service and clerical jobs largely, the effect is there are many women willing to do these kinds of jobs.

Market factors do prevail. For example, the shortage of computer technicians bids their price way up. It is not that they are undervalued in the work but simply that there are far more of them willing to do secretarial work. Our focus is to try to help those women realize the other opportunities that are available to them. That is not being done to any extent at all.

Ms. Hart: Can I take from what you say that women should no longer be librarians; they should be socialized to be groundkeepers?

Mr. Botting: I would not say that.

Mrs. Andrew: Value is in the eye of the beholder; it truly is. Even these job evaluation systems embody certain value judgements and weightings. Because you and I are used to working with paper in desk jobs, we tend to regard those people in those jobs in a little higher esteem than we do someone who happens to be out clipping a hedge. That is our perception of value. We are quite concerned that if governments think the only way to determine value is to use a job evaluation system, it will put emphasis in the wrong area in terms of helping women.

Ms. Hart: I am interested in your evaluation. Let us assume that a groundkeeper and a librarian are in equal supply on the market. What is your perception of the value of those two jobs? Which one has more value?

Mrs. Andrew: My perception would only count if I happened to be one of the staffers in the Pay Equity Commission.

Ms. Hart: I am interested right now.

Mrs. Andrew: That is where the power will rest and that is where my perception would matter. Quite clearly, the people who staff the Pay Equity Commission will have their own set of value judgements and they will use them with regard to whatever systems are employed. They will be the people making the decisions; so my perception of those two jobs is irrelevant. The people on the pay commission will decide finally what those jobs are worth.

Ms. Hart: You do not want to answer the question.

Mr. Wiseman: Mr. Chairman, in all fairness, I do not think that is a fair question to ask our witnesses.

The Acting Chairman: What is the definition of "groundkeeper"? Is that the general manager of a golf course or someone who cuts the lawn? All these things come into it.

Mr. Wiseman: Without its guidelines, even the commission will have trouble answering that later on.

Ms. Gigantes: It is quite ridiculous to say that such a question is not in order. It is perfectly reasonable to ask for a legitimate opinion from one of our witnesses.



The Acting Chairman: There is no question that it can be properly asked. It proves there is variety, and nobody is suggesting it is not a proper question.

Mrs. Andrew: My answer is that my own opinion will not matter. It will be the opinion of the people on the Pay Equity Commission that matters.

Mr. Botting: The question gets to the heart of the issue, though. It is fundamentally very difficult, I dare say, for anybody in this room to answer that question in the sense that one can further ask who, at any given time--say, in January--is more important, the boilermaker or, to take the ludicrous extreme, the brain surgeon?

The boilermaker keeps our houses warm; if his job disappears, we will all surely perish, because we will freeze to death in a matter of hours. The brain surgeon has invested a great deal of his time but may at that given time or for other reasons not be quite carrying the same societal burden as the need in January to keep houses warm throughout the city. You get into these kinds of detailed problems in even the definition of responsibility.

Furthermore, to analyse occupational segregation is very difficult. As Judith was attempting to illustrate, in many cases, occupational segregation is a matter of choice as well as a matter of people imposing segregation upon one. There are many managers in this room who at times have thought it might be nice to be a sheep herder and avoid the day-to-day pressures and stresses and choose to go out and clip hedges.

I am being facetious, but the point needs to be made that both the analysis of occupational segregation and the analysis of human value are exceedingly complex tasks, so complex that the variance that Judith reported in her brief through actual case studies and empirical documentation has shown itself to be very great. We use the example of comparison of two states for a particular type of job classification, which further illustrates that.

Ms. Hart: The question has been asked.

11:00

Ms. Gigantes: If I can briefly address myself to page 6, it seems to me that in discussing the role of the public sector unions and rejecting the notion that unions should bargain over job content and how job content is evaluated, you really reject the whole notion of human resources management as we have come to know it as a profession that produces increased productivity for firms and for organizations in modern management.

Mrs. Andrew: To suggest that unions have no place in the bargaining of job content is simply to say that in the view of many of the proponents of this legislation, job evaluation systems are the final answer. These systems are supposed to be unbiased.

Ms. Gigantes: Perhaps I can read what you have said in your brief. "To what purpose would legislators design a law that allowed the unions to bargain over how the job content is evaluated?"

Mrs. Andrew: The point is that at present it is alleged that there are inequities for women in the government. The unions have bargained whatever pay rates apply currently, so it was in the process of the bargaining that

those inequities arose. It is also postulated that the way to correct this is to apply a job evaluation system that is unbiased and that applies equally to everyone in the public service. If at the hands of unions these inequities have arisen--I should not say at the hands of unions. In the bargaining--

Ms. Gigantes: That is what your brief says. It says "at the hands of unions."

Mrs. Andrew: It is. In the bargaining between the employer and the employees with their bargaining agent, inequities have arisen, according to the proponents.

Ms. Gigantes: Do you not see the inconsistency of a brief that says to us, first, that people in the public service are overpaid and women are overpaid compared to the private sector and, on the other, hand says, "If there is a problem for women in the public sector"--you have already identified a problem, which is that wages are too high--"it is the fault of the unions."

You tell me how the unions in the public service sector are supposed to be able to change a pattern that, whether you want to see it or not, is a totally consistent pattern--we see it decade after decade--where the work that women do gets paid less than the work men do. As you say, all this is very subjective, but there is a pattern to the subjectivity that we have seen consistently throughout history, that we see consistently throughout our economy, that is consistent in the public service and that is consistent in the private sector.

Mrs. Andrew: We are talking about two different things. First, we are talking about equity within the public service. It is alleged that there are inequities there for women. That is what is alleged. It is also alleged that the way to correct this is to apply a job evaluation system. Separate from that, we are talking about equity between the public sector and the private sector. We are pointing out that there are inequities there in terms of--

Ms. Gigantes: You are addressing the wrong bill.

Mrs. Andrew: This is what is pertinent to our membership and we have to point it out to you. I assume you would rather not talk about that, but we have to point it out.

Ms. Gigantes: The subject of our legislative efforts today and, God knows, for the past 18 months have not been to somehow make wages in the private sector and in the public sector on a single grid. That is not the subject. The subject is how we address the consistent pattern I talked about earlier.

Mrs. Andrew: The subject is the proposal to spend an additional \$88 million to further increase wages and to further exacerbate the public-private pay differentials. That is what we are addressing.

Ms. Gigantes: We are going to do it in the private sector too and that is really why you are before us.

Mr. Botting: The \$88 million itself speaks very loudly.



I would like to go back to your point, if I may. I said originally, and nobody disputed it at that point, if one truly believes in pay equity within the public sector, this bill was not necessary. In fact, if we just forget the private sector implementation for a debate at another time, it strikes me that this bill is an insult to the collective bargaining process, because it can be done through normal collective bargaining. It has been done by the city of Los Angeles and it has been done by Yale University. If you are interested, we can provide further examples where respect for the collective bargaining process has allowed--

Ms. Gigantes: It is also the knowledge that unless you do it you will be legislated into it, and that certainly has not been effective so far in Ontario.

The Acting Chairman: Are there any other questions?

Mrs. Andrew and Mr. Botting, thank you for coming and giving us the perspective of the very large organization you represent.

Ms. Gigantes: I want to add, along with my friend the member for Lanark (Mr. Wiseman), that I also am a small employer.

Mr. Wiseman: What business are you in?

Ms. Gigantes: I am in the business of being a partner in a household and I hire a person to assist in the running of that household. Do you want to ask me what I pay?

Interjection.

Ms. Gigantes: I do all the filings and employment duties that any small businessperson does.

Mr. Wiseman: It is a little bit different, but you would not understand.

The Acting Chairman: Thank you very much for your presentation.

Mr. Wiseman: My wife does all those things.

Interjections.

The Acting Chairman: The next presentation will be made by the National Action Committee on the Status of Women.

I wonder if some members of the committee would join the general deliberations we have here.

Welcome to the committee. Perhaps you can identify yourselves. You have an hour for your presentation and for the committee to ask you questions.

#### NATIONAL ACTION COMMITTEE ON THE STATUS OF WOMEN

Ms. Cohen: Thank you very much. My name is Marjorie Cohen and I am vice-president of the National Action Committee on the Status of Women. I would like to introduce the other women who are with me. To my left is Laurell Ritchie, who is on the committee on employment and the economy for NAC; and also a member of the same committee, on my far right, is Pat McDermott.

Another person with us today is Elizabeth Millar, who is head of the classification equal pay section of the Public Service Alliance and is associated with one of our member groups.

I would like to make a few comments to the written brief we have presented to the committee. Elizabeth Millar will make a few comments after me. Then we will be happy to have a discussion with you on this issue.

First of all, for those of you who are not familiar with NAC, I would like to say a few words about our organization. The National Action Committee on the Status of Women is a federation of 500 women's groups across Canada. We represent about five million people in this country. NAC has a long history of lobbying the federal and provincial governments for legislation to improve the position of women.

One of our priority issues since we were founded in 1972 has been equal pay for work of equal value. It is largely because of that effort that the original 1975 bill establishing the Canadian Human Rights Act was amended to include equal pay for work of equal value. The original bill had provided for only the old standard of equal pay for equal work. We somehow convinced Ron Basford, Minister of Justice at the time, to bite the bullet, as he later referred to it, and to move in a very dramatic new direction to introduce equal pay for work of equal value.

11:10

This was a historic move in Canada, one that allowed the country to begin to live up to its international commitment to equal pay for work of equal value and one that had been signed earlier with the International Labour Organization Convention 100. It was also beginning to move in the direction of correcting the tremendously unfair way women had been treated in this country.

Legislation to provide equal pay for work of equal value was promised to the women of this province by the current government during the last election campaign, and our organization feels what we are being offered with Bill 105 falls far short of the promise. Essentially, we feel Bill 105 is a piece of shoddy legislation. It is amazingly complex and unclear, and if one were cynical one might assume it had been deliberately designed to create anxiety and opposition. Even worse for us is the fact that it does nothing to improve wage inequalities for the vast majority of women in the province.

For those of us who had been working for equal pay for work of equal value for the past 15 years, this bill is a tremendous disappointment. We realize there has been considerable opposition from certain sections of the business community, and we heard this a few minutes ago, but we feel this is no excuse for the government to renege on its obligation. This bill is a watered-down version of what was promised.

Before I discuss what we see as specifically wrong with the bill, I want to emphasize that despite our disappointment we feel this bill can be rescued. We have confidence that it is within the power of this government to draft quickly legislation to provide genuine equal pay for work of equal value.

But this requires a commitment on the part of the government which goes beyond trying to appease the ire of groups that oppose the legislation. It is time this government did what the federal government did 10 years ago, and that is to bite the bullet and do something real. It is time we had the real thing.



I would like to move to the criticism of the bill. First, this legislation does not cover all workers. We feel equal pay legislation should be applied universally and equally. It is not clear why one group of Ontario workers should be put under different rules simply because they happen to work for the Ontario government or because they happen to work in the private sector. Why should Ontario workers be divided by law in their attempt to achieve equal pay for work of equal value?

Neither the federal nor the Quebec equal value legislation makes such a distinction. The ILO Convention 100, to which Canada and Ontario are both signatories, requires such legislation to cover all workers. Some members of this committee have pointed out that Manitoba has phased in pay equity legislation, first in the narrow public sector, then a year later in the broader public sector. We remind you that this has been done with one piece of legislation. Although we do not support Manitoba's delayed implementation, even this phased-in process is a great improvement over the approach of the Ontario government.

The Liberal government's strategy now seems designed to pit people against one another in their desire to win equal pay legislation for their particular constituency. All Ontario workers, including part-time workers, trainees, temporary workers and men, should be paid for the value of their work. We should not have to wait while the government experiments with a relatively small group of public service workers. We should not have to suffer the delays of this experiment while the private sector workers are left to wonder whether they will ever get legislation.

The next issue I want to address is the issue of gender predominance. The National Action Committee on the Status of Women has always opposed the setting of numerical cutoffs which define male and female groups of jobs. One reason for our opposition to such a process is that they can be subject to employer manipulation. By careful hiring and transfer of employees, management can play the numbers game to limit the coverage of the legislation. New job titles, descriptions and series can be constructed to avoid both predominantly male and predominantly female designations. Such manipulation could deny many workers the right to achieve equal pay and could also prevent the most appropriate male comparisons from entering the scheme.

Second, if restrictive gender cutoffs are used, women clustered at the bottom of predominantly male job series will be excluded. It is not uncommon for women to be relegated to the lowest rungs of predominantly male job ladders. For example, female collection clerks can be clustered at the bottom of a financial job series, with male collection officers clustered at top levels. Similarly, female food handlers are often found at the bottom and male cooks at the top of a food service group. Only a flexible approach that takes into account historic patterns and stereotypes can fully address systemic gender discrimination in pay practices.

A third reason for opposing arbitrary gender predominance tests is the serious possibility that such cutoffs could be challenged as contravening the equality rights section of the Canadian Charter of Rights and Freedoms. Although these restrictions could potentially be defended as a reasonable limit within the charter, provided there is a rational justification for such numerical barriers, the National Advisory Committee on the Status of Women can see no rational justification for these cutoffs. A charter challenge could delay the implementation of equal pay for years and possibly result in an order invalidating the entire approach.

Ultimately, we feel that any woman should be able to use this kind of legislation to achieve equal pay for work of equal value. A woman should not be excluded from the benefit of this legislation simply because she is not part of a predominantly female job category.

In our brief to the consultation panel on the green paper on pay equity, NAC expressed concern over the government's use of the term "pay equity" and the philosophy of a limited one-time-fix program, as proposed in Bill 105. We noted that time-limited programs will not prevent subsequent re-establishment of low wage patterns and called for a permanent and universal guarantee of equal pay for work of equal value in Ontario law.

In our brief, we also pointed out that a complaint-based procedure alone is inadequate. In the federal sector, despite the significant multimillion-dollar settlements that resulted from equal pay for work of equal value complaints, the wage gap between men and women decreased by less than one per cent between 1981 and 1985. Therefore, NAC called for a proactive approach in the federal sector, in addition to retaining the complaint mechanism. Both features are critical for the elimination of the wage gap between males and females. Bill 105 provides for only the proactive or the one-time-only phase. We feel this is not enough.

The current scheme under Bill 105 proposes that unionized public service workers be subjected to two, and possibly three, separate job evaluation schemes. These plans appear to be applied at the same time. This is an unnecessarily complicated procedure and one that delays the pay adjustments owed to women.

The bill also anticipates comprehensive job evaluation systems. This clearly places limits on the bargaining agent's ability to opt for a different approach in designing a pay equity program. Such a limitation flies in the face of the ILO Convention 100 requirement that the methodologies of job assessment be negotiated between the parties to a collective agreement.

Bill 105 appears to assume that pay equity will be achieved only once. There is no provision to incorporate new female groups or appropriate male comparisons if they emerge after the effective date.

Bill 105 proposes that when there is more than one possible comparison, the female group receive the lowest male job rate as their target salary. NAC believes this is totally unacceptable.

NAC proposes that a pay equity/equal-pay-for-work-of-equal-value program should consist of two phases: an initial pay equity phase focused on reducing the wage gap and a second complaint-based equal value phase that would exist in perpetuity as a basic labour standard.

This initial pay equity phase should focus on reducing the wage gap. Although there is significant debate as to precisely what proportion of the wage gap is attributable to gender-biased practices, NAC maintains that this is most appropriately the subject of negotiation. For employees who are not represented by a bargaining agent, a complaint-based mechanism would allow employees to challenge the employer-initiated proactive scheme. This would provide an incentive for employers to calculate and demonstrate that they are closing the wage gap.



NAC does not believe the initial pay equity phase should be restricted solely to time-consuming and costly comprehensive job evaluation systems. Such a rigid approach will undoubtedly delay the wage adjustments necessary to rectify the major gender-biased pay practices of employers.

Once a proactive program is complete, NAC proposes a second ongoing complaint phase. During this phase, the mechanisms would be available to provide true equal pay for work of equal value. This complaints system would be based on the internationally accepted factors of skill, effort, responsibility and working conditions as used by the Canadian Human Rights Commission. This ongoing complaints procedure requires a well-funded, well-staffed commission and tribunal that will move complaints along quickly and avoid the slow processing of cases we have witnessed in the federal arena.

We have not included all our specific objections to the bill but only an outline of the major principles that we object to. We endorse the submission that has been made by the Equal Pay Coalition, which was much more extensive than ours.

I would like to recap some of the recommendations we have made. First, we recommend legislation that will compel employers to give workers equal pay for work of equal value; that is, this should be enshrined in the law. It should be illegal to give unequal wages for equal value.

Second, we want to see legislation that is universal in its application. It should include all workers, male and female, part-time and full-time, and private sector workers as well as all workers in the public sector.

Third, we want to see the elimination of gender predominance as a requirement for pay adjustments and complaints under the law.

Fourth, we would like to see legislation that provides for two stages to implement equal pay for work of equal value, an initial proactive stage that would correct the gross inequalities we see, followed by a complaints-based mechanism that would allow individuals to benefit from the spirit of the law.

Fifth, in the proactive phase the rigid job comparison structure and job evaluation plans proposed in the bill should be eliminated. A more flexible approach that respects the bargaining rights of unions should be adopted.

Sixth, the legislation should be simplified so that it can be understood by the people it is designed to help.

I would like to draw your attention to the title of our brief, which is Now is the Time to Do it Right. We feel there is time and we can do it right at this time. Extensive revisions of Bill 105 are necessary. The women of this province expect and need equal pay for work of equal value. Unless this government revamps this poorly drafted and disappointing bill, we can only conclude there is not a serious commitment to the goal of equal value legislation in Ontario.

Elizabeth Millar has a few comments she would like to make.

Mrs. Millar: I always hesitate when I am introduced to make a few comments. Once I get into this topic, a few comments inevitably enlarge a little.

I am from the Public Service Alliance of Canada. Our jurisdiction is

primarily federal but we do have units in Ontario. Our concerns with the bill are so major and mirror so much the concerns you have just heard, we thought when we met this morning that if I gave an outline of our paper--which will not arrive until tomorrow--and of our concerns with the bill and relate them to the federal experience, this would facilitate questions and tie things together.

We have organized our concerns with the bill into three main areas. The first, and possibly the most important, is that we feel strongly this bill denies the protection of the law to a lot of women in Ontario and denies access to the pay equity law. The second major area of concern is the restricted complaint process and the third is what we see as favouritism to employers enshrined in the bill.

Back to the specifics on the first area of denial of the protection of the law to women workers, as soon as you start talking about the conflict of sex predominance you have eliminated many women from the application of the bill. We are buying into a stereotype that women work in only a few jobs and that there are mostly women in those jobs. Many of our complaints in the federal sector would not have gone through; in the case of the general services complaint dealing with food service workers in the kitchen and floor cleaners and laundry workers, the percentages of female dominance for those subgroups in a very large group were 58 per cent, 52 per cent and 50 per cent. This is for the reasons shown in that bill, with males at the top and women at the bottom.

The group definition presents immediate problems. First, it is not clear. It marries a couple of different concepts that you may have heard of, jobs that have been historically tied together, and here again you have gone into the stereotype. If you are a woman, you are very lucky to be called a clerk or a secretary. On the other hand, the work that two clerks do may be vastly different; we certainly know that.

As well, in many collective agreements you will find positions tied together for pay purposes, so a number of different jobs may turn up at pay level 3. There is no community of interest between those jobs in your bill that links them together. The representative job concept of choosing one representative job for what will often be large female groups is also very repugnant to us. Choosing it on the basis of numbers ignores the fact that there may be a variety of jobs involved in that particular group, and the binding nature of the plan is one that we wrestled with because when the union comes out and says, "We do not want the plan to be binding," it looks as if it does not want equal pay for work of equal value; and I assure that is anything but the case.

The legislation binds the pay equity plan to the union, even if it is contrary to its internal value system. You have defined pay equity as payment of a predominant group of women at the lowest pay rate for males. The lowest we would ever go in our union is to a representative sample of male jobs. We went to that position very reluctantly from the top job. I must suggest to you that to suggest comparisons to the lowest rate is as unreasonable as for us to suggest comparisons to the highest rate only. I suspect we know what our predecessors would say about that. You should provide a floor; you have provided a ceiling.

On the complaint process, the timing is an obvious problem. We are talking about a very new concept that inevitably needs a lot of expertise, both to file complaints and defend them. Unorganized workers, and even



organized workers, are just not going to be able to file complaints and defend complaints in the time that is allowed.

There is a point I am not sure you have recognized. You have recognized the need for information in the amendments, but any purchase of a management job evaluation plan from a firm is going to put restrictions on how much information that firm is going to allow out. If there is anything the management consultant firms defend, it is their business, which is their individual job evaluation plan and the expertise behind applying it. They want you to have to buy that from them; they do not want to publish it on notice boards.

There is a third area where we see favouritism shown to employers. We have touched on one: wage adjustments to the lowest annual range. The second one is what we see as no protection against employer manipulation in the work place. Those are very strong words because, of course, employers are all going to obey the law, but we have some groups in Manitoba as well. At one hospital, the workers are now in their third round of job descriptions since the pay equity act came in. Nobody quite knows what the workers are doing or what they should be doing vis-à-vis what is on paper. We will not say this is as a direct result of the pay equity bill, but the coincidence is astounding.

Contracting out and technological change will change the work force, the group composition, and there is no freezing in time of enforcing what exists now as the pay equity solution with 18 months after the filing of the pay equity plan.

The definitions in the act are either nonexistent or open to wide interpretation. I would defy anybody to identify a temporary work shortage. I am from Newfoundland and there is no such thing. We can work something out on that. This is a particular concern with us because our work federally has turned a lot more into legal challenges than into resulting pay equity; and that is in part because of the need to flesh out and work with definitions within the bill. What you have now in the bill are guaranteed legal challenges that are going to go on for some time. There is way too much openness.

The unilateral development of a comprehensive plan by employers is a very real favouritism. Put it in the reverse: have a union draw a straw and develop a comprehensive plan. Obviously, the employers would go wild. Why do employers develop the comprehensive plan that is going to be binding on a group of union and nonunionized workers without any safety net?

The last point is the 18 months' delay in the first wage adjustments. There is no explanation as to why 18 months should be allowed. Of course, we would prefer to see retroactivity, not future payments.

The Acting Chairman: Thank you. I will open it for questions from the committee.

11:30

Ms. Cohen: We have some additional information we would like to pass out to the committee members.

Ms. Fish: Did you say you had a brief that is going to be arriving tomorrow?

Mrs. Millar: Yes.

Ms. Fish: I wish it was here today, now that you are here, to have the opportunity of asking some questions, but we thank you for touching upon some of the key points in advance. Many of them are quite hot spots.

The Acting Chairman: Are those your submissions today?

Ms. Cohen: Yes, they are. Thank you.

Ms. Ritchie: Perhaps we should take one second to explain the information we are handing out now.

The Acting Chairman: Certainly.

Mr. Wiseman: Could I have a clarification while that is being handed out? On page 8, you went from the second last paragraph to a list of recommendations you had separately. I did not copy those down, and there were four or five of them. Do you have a little list of those we could see?

Ms. Cohen: Yes, I have.

Mr. Wiseman: I noticed you read from some part other than what we have before us.

Ms. Ritchie: Yes. We will try to get them photocopied before we leave.

Mr. Wiseman: That is fine. There were four or five recommendations.

Ms. Cohen: There were six.

The Acting Chairman: We will ask the clerk to photocopy them and hand them around.

Ms. Ritchie: Briefly, the pages you have just received cover the following information. The covering page is a document we were given by the ministry's working group on the public service and shows the very complicated and time-consuming procedures laid out for the implementation of the pay equity plan.

On the second page, we draw your attention, in particular, to two items. This is a photocopy of Convention 100, to which we have referred, which Canada ratified in 1972 after seeking the agreement of all the provinces. What that equal pay for work of equal value standard says in article 2, number 1, is that it is to "ensure the application to all workers of the principle of equal remuneration." That is a point we have stressed in our brief, because we are not happy to see the separation of public and private sector workers anticipated by this legislation.

Article 3, number 2, talks about how the appraisal of the jobs is to take place and says: "The methods to be followed in this appraisal may be," and then talks about "authorities responsible...or, where such rates are determined by collective agreements, by the parties thereto." That is one of the reasons we have supported the idea that there may be a variety of options in working towards reducing the pay gap and that should not be in any way restricted to a comprehensive job evaluation system.



The third and fourth pages that are included are from the working group on the public sector within the ministry and show the numbers of jobs in, first, the female-dominated classes and, second, the male-dominated classes that would be excluded once you start talking about 50, 60 or 70 per cent cutoffs.

Our brief makes clear that while gender predominance in terms of number should be a factor, there are many other factors. I know Elizabeth Millar could give you a few examples. One example we talk about when we are talking about not only absolute numbers but also historical factors and sex stereotyping is the case of the federal penitentiaries. While hospital technicians are overwhelmingly women in the general public service or the private sector, in the federal penitentiaries women are only about 51 per cent of the hospital technicians because there are a lot of men hired in that particular instance to deal with male inmates. We are saying that this should be considered a job that has been undervalued because of the general presence of women in that job in the economy.

The final page that we have included is the Canadian Human Rights Act. It simply states the kind of language we are looking for as the general prohibition against unequal pay for work of equal value.

Mr. Wiseman: May I go back to the second-last paragraph of page 8? Maybe you can help me; maybe some of my colleagues know. You mentioned a well-funded, well-staffed commission and tribunal similar to what they have in Ottawa. Can you give us some idea of the numbers of staff they have to look after that in Ottawa? In addition, how long would a person who had a complaint have to wait before his or her complaint was heard?

Ms. Cohen: I must tell you that the National Action Committee on the Status of Women has never applauded the speed with which complaints have been processed at the federal level. In fact, we have been complaining about that since it was established.

We do not think this is a model. What we are saying is that we need a tribunal and a commission, but we need one that would move complaints along quickly. This has been a problem at the federal level. We were never really happy with the way the federal government handled the whole issue of equal pay for work of equal value.

Mr. Wiseman: Can you give us an example of the time and the numbers who handle the complaints?

Ms. Cohen: They are terribly underfunded. How long does it take?

Mrs. Millar: The first tribunal that sat to hear an equal pay case is hearing a case that was filed in 1979. The company went out of business two years ago, and the case still is not settled. The only settlements we have had--

Ms. Fish: In 1979?

Mrs. Millar: Yes, 1979.

Ms. Fish: And it is being heard now, in 1986.

Mrs. Millar: It is still in process, because of the--

Ms. Cohen: Other cases have been settled in the meantime, but that is not--

Mrs. Millar: But no cases have gone to tribunal and been settled. We have settled ours without going through the tribunal process, through a combination of bargaining and--

Mr. Wiseman: Can you give us some idea of the number of people who are hearing these cases and maybe some idea of the number of cases that are proposed to go before the tribunal? It will give me as a layperson some idea of what our complaints group will have to deal with whenever this bill is passed.

Mrs. Millar: Under this bill, do not worry. Under this bill, as it now stands, you will have a very restricted complaint process.

Mr. Wiseman: But you really cannot tell us how many groups of people hear complaints at the federal level.

Ms. Cohen: One group.

Mr. Wiseman: Just one group.

Ms. Cohen: Yes.

Mr. Wiseman: For the whole of the country.

Mrs. Millar: The commission has a list of tribunal members. The commission does not hear complaints. It receives complaints and has them investigated. Then if there is justification, it refers them on; it sets up a tribunal. There is a group of tribunal members, a list of some 200 members drawn from various walks of life. The problem is getting complaints to the tribunal, not the tribunal process. The bottom link is at the investigative stage at the commission. I do not know what the total commission staff is, but until last year they had one person working on equal pay for the entire--

Mr. Wiseman: Do they go to different parts of the country to hear these rather than bring them to Ottawa?

Mrs. Millar: The tribunal would, yes.

Ms. Gigantes: Excuse me. If I may ask a supplementary question, the tribunal does not deal only with equal pay matters; it deals with all human rights Canada questions. I do not want my friend to get the impression that we have 200 tribunal members across this country dealing with equal pay.

Mrs. Millar: Most of these people have never been called on. I would say that at the moment there are perhaps four active tribunals in terms of waiting--

Mr. Wiseman: The backlog is--

Mrs. Millar: The backlog is not in getting to tribunal. The backlog is at the commission stage, where they have very few staff. As I said, there was one equal pay person until last year; now there are four.



The Acting Chairman: May I interject for a minute? Dr. McAllister has pointed out that in your submission you indicate that Bill 105 provides only for a proactive phase, that there is no complaints procedure.

Ms. Ritchie: The only thing you can complain about is the proactive system.

Dr. McAllister: No.

Mr. Polsinelli: Perhaps Dr. McAllister can clear up that point.

The Acting Chairman: Yes. I would like to have Dr. McAllister reply to that.

11:40

Dr. McAllister: Bill 105 provides that during the proactive phase complaints can be lodged, investigated and resolved with regard to the proactive implementation of pay equity. You will find that in section 25. I refer you especially to the amendments we have tabled. They are a restructuring of the complaints provision during the proactive phase. At the conclusion of the proactive period, the bill provides that a full complaints-based program comes into play. I refer you to the amendment for section 26, which alters the wording for that.

It is a two-phase program: proactive with complaints during the proactive period about the proactive program, followed by a complaints-based program, during which complaints about any gender-biased compensation practices can be entertained by the commission.

Ms. Ritchie: Could we ask you a question? Why has the government not seen fit to introduce the language that we know would be acceptable to all organizations that are supporting this legislation; that is, that you can complain about equal pay for work of equal value?

The Acting Chairman: We will let Mr. Polsinelli answer that question.

Mr. Polsinelli: That is a policy question. We are talking about different types of legislation. The federal legislation to which you have referred is under the Human Rights Code and you need broad, general language to cover the discriminatory practices. This is a specific bill, which brings a benefit to certain individuals in the public sector. The language is more refined and provides a specific mechanism for obtaining the redress.

Ms. McDermott: I would like to make a point on that. This may have to do with drafting, and I am sure you will be getting some other submissions in the next while on these kinds of points. We have had lawyers look at these sections and we are not convinced that even the amendment ensures a complete open-based complaints system on equal pay for work of equal value. This has to do with the concern of people who are constantly in front of tribunals with pieces of legislation that must be interpreted by arbitrators and commissions. It is a legal matter that we are discussing.

If interpreted in some lights, given the wording, the amendment does not ensure a completely open-based system based on equal pay for work of equal value. Given the reading of the bill as a whole, this might ensure complaints simply based on the pay equity program as narrowly defined in the bill, that

you must have been in the system on an effective date. There is no mention of a new effective date; there is no mention of the kinds of criteria you would have to meet to bring yourself under a complaint on equal pay for work of equal value.

You cannot read a section alone; you have to read the bill as a whole. That section must refer back to the definition of pay equity. An arbitrator or a tribunal would look at that and would also look at what the very restricted wording, even in the amendment, says pursuant to a pay equity plan. There would probably be an assumption that you must fall back on the restrictions in the bill and you would be talking about pay equity effective dates and predominant categories again.

From my experience, this has been a greatly examined point by many lawyers in Toronto for the last six months. Potentially, the biggest problem is with your assumption that you have a complaint-based system built in. We do not think you do. There is a potential drafting problem here. If you want to talk more about that now, I am willing, but it gets a bit tricky.

Dr. McAllister: I would be interested in clarifying the wording of the proposed amendment and our interpretation of it. We could be subject to legal interpretation.

Ms. McDermott: This is exactly our point throughout the entire handling of the bill, especially within the National Action Committee on the Status of Women employment committee. The bill is worded so vaguely and, in many ways, so poorly that we cannot discern the rights that someone would have under the complaints system. This is not the only section. Exactly what can you complain about in this system?

Mr. Polsinelli: The bill is intended to address one aspect of the problem--gender-based compensation practices. The bill tries to close that portion of the wage gap that is due to a systemic undervaluation of women's work, that portion that is due strictly to discriminatory practice; that is, women are being paid less money because they are women and not because their positions are worth less or the job they are doing is worth less than a comparable male job. It is hoped that after the proactive stage that wage gap will have been substantially, if not all closed, at least within the public service.

Under section 26 of the act, the complaint-based mechanism that is triggered at that point would entitle the employee to complain about any additional gender-based compensation practices. If we look at the bill as a whole, it is hoped that after the proactive stage the wage gap will have been narrowed considerably and any gender-based compensation practices that result after that point or even during that point can be complained of to the commission.

Ms. McDermott: How defined?

Ms. Gigantes: Sixty or 70 per cent is what gender bias has meant in this bill.

Ms. McDermott: You have to look at the bill as a whole.

Ms. Gigantes: So that is a restriction on the complaints process.



Mr. Polsinelli: I am sorry, Ms. Gigantes, but I did not catch the first part.

The Acting Chairman: Are we getting involved in drafting and legal interpretation?

Ms. Gigantes: If we look at what I assume is under discussion here, which is the proposed amendment to section 26, what is proposed is that the employer shall not be allowed to "introduce any gender-biased compensation practices." If that refers back to the 60 and 70 per cent predominant group structure of the bill, then we do not have an open complaint process. We have a complaint process restricted by the predominant group structure. If I am a woman in a group that is predominantly male, but the job I am doing is worth more than I am getting paid, as I read the amendment to section 26, I cannot use section 26 to help me.

Ms. Ritchie: I think it is fair to say that if the government was prepared to draft something that said the prohibition was against unequal pay for work of equal value, which is the international covenant Ontario and Canada have signed, there would not be these questions.

Mr. Polsinelli: I appreciate some of the points you are making, but if we are talking about the definition of what is a predominantly female group of jobs and what is a predominantly male group of jobs, and if we look at the legislation in other sectors of Canada, particularly Manitoba, we find they have defined "predominantly female group of jobs" as having 70 per cent.

In our legislation, by taking the 60 per cent figure, we are at least more progressive than one of the other provinces of this country. That is another issue we have discussed at earlier points, and I am sure we will continue to discuss it at later points, but it is a different issue. The complaint-based mechanism that would fall into place under this bill will trigger an individual's rights to complain under the bill.

Ms. Gigantes: No.

Ms. Ritchie: Manitoba is the only example you can point to.

Mr. Polsinelli: We assume Manitoba is a progressive province, as is Ontario.

Mrs. Millar: It has been said a number of times that this bill provides rights to individuals. We cannot see that. We see this as providing rights to certain groups that are more than 60 per cent female. We see no protection for a female working as a printer or a truck driver. You have said a number of times that this bill provides rights to individuals. Can you confirm that or are we correct in saying that a female truck driver has nowhere to go, assuming most truck drivers are male?

Mr. Polsinelli: We also assume that if a female truck driver is in a job category where 95 per cent of her co-employees are male truck drivers, she will not be receiving less money than her male counterparts because there is legislation on the books providing for equal pay for equal work.

Mrs. Millar: That is tremendously naive.

The Acting Chairman: Excuse me. I think you have made your point very well and we have had an appropriate response. Ms. Fish would like to ask a question. Go ahead, Ms. Fish, you have been very patient.

Ms. Fish: The exchange was an extremely interesting one. My question is to Mr. Polsinelli. Can you tell me why the proposed amendment to section 26 has not used specific wording to state that the basis for the complaint may be that unequal pay has been given for work of equal value?

Mr. Polsinelli: As to the amendment to section 26, I will refer this to--

Ms. Fish: This is a policy question.

Mr. Polsinelli: --Dr. McAllister in terms of why the amendment was placed. I think it actually expanded the complaint-based mechanism. I refer it to her for a technical explanation.

11:50

Ms. Fish: I suggest this is a policy question and it would be singularly inappropriate for the parliamentary assistant to the minister to refer a matter of policy to a public servant. I am asking a policy question. Can you tell me, as a matter of policy, why has the government not introduced that specific wording?

Mr. Polsinelli: Perhaps before I answer I will make a note of that question. We would want to know exactly what the amendment does and what the complaint-based mechanism is. That is a technical question.

Ms. Fish: That is a technical question. Would Dr. McAllister like to answer the technical question?

Dr. McAllister: I will try to sort out the technical question from the political question to the best of my ability.

Ms. Gigantes: Good luck.

Ms. Fish: They are all political. The difference is policy versus technical.

Dr. McAllister: There may be a fine line. The question is, what does section 26 provide in its amended form? First, I will clarify a point that was raised by the National Advisory Council on the Status of Women in its discussion of section 26, which I think may have been a slight misinterpretation.

The provision reads: "From the time of the first adjustments in rates of compensation required pursuant to a pay equity plan...." That gives you the timing for the beginning of the full complaints provision. Once you have stepped into the adjustments for part VI, which is the final part of the proactive phase, you then move into the full complaints base. There is no reference to what you may complain about in terms of gender bias. It is being related only to the contents of proactive pay equity plans. I think there is a slight confusion in your reading; confusing the timing section of this amendment with the provision for the complaint, what you may complain about.

It provides an employer shall not introduce any gender-biased



compensation practices. In this bill there is consistent reference to compensation practices and gender bias in compensation practices as opposed to equal pay for work of equal value. I take it that you are taking issue with the choice of that wording.

I could do it bit by bit. We have preferred to use the concept of compensation in this bill as opposed to equal pay--for example the equal pay part--because the government has taken a total compensation approach to providing readjustment for gender bias. We make clear in our definition of compensation that we are referring not only to rates of pay but also to any type of compensation practice that an employer might engage in. That was the reason for the choice of wording of compensation as opposed to pay.

In that respect we have replaced the usual concept of equal pay for work of equal value with a concept that was becoming current when we were working on the bill, pay equity, which sort of flowed out of American discussions about what used to be called "equal pay for work of equal value/comparable work," which was also claimed by Abella in her report. I do not think there is any particular magic to referring to compensation practices or to equal pay and then having in your definition section a broad definition of "pay" as you might find under the Canadian Human Rights Act.

I am not sure that technically there is a great deal of difference. We did want to stress there was a total compensation approach.

We then provide in this amendment that any employee or bargaining agent may file complaints with the commission about any gender-biased compensation practices. My interpretation of that is it is a rather broad provision rather than the alternative interpretation which I seem to be hearing, that it would be taken to be rather restrictive.

Ms. Ritchie: I have two comments to make. First, if you will refer to the international convention, that does talk about total compensation, because it talks about equal remuneration for work of equal value, and your definition of "remuneration" covers the various items that you are talking about. There is no problem with using the term "equal remuneration for work of equal value."

The other aspect of this, aside from a natural suspicion on the part of women's organizations as to why you have not used that formulation when it is sitting there as an agreed-upon international convention, is that section 26, as amended, still talks about employers introducing gender-biased compensation. What if a pay equity plan as designed does not cover a number of individuals or even some women in groups? It is not a question of the employer introducing anything new; it is what has been in place all along but which was not covered by the highly limited and restricted pay equity program.

Dr. McAllister: Your interpretation is that the proactive pay equity program is highly restrictive and limited. In terms of my understanding of who will be covered by the program, it covers the large majority of women in the Ontario public service. I also refer to the complaints provisions during the proactive phase which would allow one to lodge and have the commission entertain complaints should there be a feeling that the proactive pay equity plans were too limited.

Ms. Fish: Since it was my question that started this off and I have not quite yielded the floor, do I understand the answer is that if there is a practice that has not been caught in the proactive phase or in the complaints

under the proactive phase and it is not newly introduced, it is not within the scope of the amended section 26 to file a complaint?

Dr. McAllister: This wording could be interpreted to preclude that.

Ms. Fish: Precisely.

We now come back to the policy question to the parliamentary assistant to the Minister of Labour, the member for Yorkview (Mr. Polsinelli). Why has the government chosen to define narrowly the basis upon which a complaint can  
ssion from Dr.



under the proactive phase and it is not newly introduced, it is not within the scope of the amended section 26 to file a complaint?

Dr. McAllister: This wording could be interpreted to preclude that.

Ms. Fish: Precisely.

We now come back to the policy question to the parliamentary assistant to the Minister of Labour, the member for Yorkview (Mr. Polsinelli). Why has the government chosen to define narrowly the basis upon which a complaint can be made rather than--listening to the learned submission from Dr. McAllister--using the words "equal compensation for work of equal value"? Why has the government chosen to afford a complaint based on unequal compensation for work of equal value as distinct from the limits which you have heard from Dr. McAllister are currently in section 26 as amended?

Mr. Polsinelli: Having heard a very detailed, technical explanation from Dr. McAllister, I would have thought your question had become redundant. However, if you feel it has not, I will take it under advisement and bring a response back to the committee.

Ms. Fish: Policy is never redundant.

Can you give us some idea when you might be able to speak for the government on this policy matter?

Mr. Polsinelli: Before we conclude our public hearings, I am sure.

Ms. Fish: That would be nice. Is the minister planning on attending here at all during public meetings while deputants are before us, so he can share with us some of the answers to these policy questions and the choices that were made?

Mr. Polsinelli: I will also bring your concern to the minister.

Ms. Fish: It would really be nice if the minister thought it was important enough to attend.

The Acting Chairman: Mr. Polsinelli, with regard to your time for the reply, it might be helpful to the committee if you could come up with a reply to that question.

Mr. Polsinelli: I did indicate to the committee and to Ms. Fish that I would take the question to the minister and bring back a reply to the committee.

Ms. Fish: Before the public hearings were completed, is what Mr. Polsinelli said on the record.

The Acting Chairman: That is why I followed up and asked on behalf of the committee if it could be done as soon as possible, because I think it would be helpful.

Mr. Polsinelli: Yes.

Ms. Cohen: This points out how tremendously unclear all this is and that the wording we suggest is much clearer, more to the point, and will cover more women. That seems to be the point of the legislation; that it actually

reduce pay inequalities between men and women. We do not think this will in this way.

Ms. McDermott: I want to stress again that this section is unclear. It is only one of many that introduce practices that will be pored over by teams of lawyers. I know most people in this room are not lawyers, but I am a lawyer and I know it is open to incredible interpretation. I want to stress that it is one of many sections we are concerned about.

Ms. Cohen: We have one other issue we would like to raise with regard to merit pay.

Ms. Ritchie: It came up as a result of the discussions with the other witness who preceded us. We have had some discussion that this business of merit pay really needs to be blown out of the water at this point. We are not talking about comparisons between individuals; the essence of this approach is that you are dealing with the comparison, evaluation or assessment--whatever word you wish to use--between different jobs.

We could get into a debate on the advantages or disadvantages of merit pay being applied, because we have a lot of problems with the concept of merit pay. As one of the members here said, there may be merit given to somebody because he has a better attendance record or is prepared to work more overtime. Until we have sufficient child care and other support programs in place in the province, there are going to be a lot of women who will be the ones who have to look after sick kids and also the ones who will have to leave early to pick up children from child care centres or from baby-sitters.

In a sense, that question is not what is in play here. What would happen is that there would be an assessment of the two jobs done. If an employer happens to apply merit pay on top of that for an individual, we may not agree with it, but it is not what is being dealt with here.

The other issue that came out of that presentation was percentage increases. One of the problems we have with not having an adequate complaint mechanism in place is precisely that percentage increases may take place after a proactive period during which the gap has not been completely closed. For example, under this legislation--and we do not agree with the bill--for women going to rest in the full male comparable rate, those rates would be widening with the imposition of percentage increases, which I remind you are not always the fault of unions bargaining but often come about through things such as wage control and anti-inflation programs.

The Acting Chairman: Thank you very much for your presentation.

Ms. Cohen: Thank you for this opportunity.

Mr. Polsinelli: Given Mr. Gillies's concern yesterday about my attendance and the minister's attendance at this committee, I feel it is incumbent upon me at this point to advise committee members that, due to unfortunate circumstances, I will not be able to be here this afternoon. I would appreciate it if you would convey my apologies to Mr. Gillies, should he decide to attend this afternoon, and also to the balance of the Conservative members who have been absent this morning.

The Acting Chairman: I will be pleased to do that. We look forward to your attendance at future deliberations.



Ms. Fish: We also look forward to the minister deciding he is going to attend, and perhaps, Mr. Polsinelli, if you would like to speak on policy for once, which you have failed to respond to today, you might sit in the front of the room, rather than placing public servants in the position of answering policy. It would be helpful if the elected members would provide the policy guidance which you as parliamentary assistant have chosen not to provide.

The committee recessed at 12:03 p.m.





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
PUBLIC SERVICE PAY EQUITY ACT  
THURSDAY, OCTOBER 2, 1986  
Afternoon Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Charlton, B. A. (Hamilton Mountain NDP)

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O'Connor, T. P. (Oakville PC)

Offer, S. (Mississauga North L)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Smith, D. W. (Lambton L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Gillies, P. A. (Brantford PC) for Mr. Brandt

Mitchell, R. C. (Carleton PC) for Mr. Villeneuve

South, L. (Frontenac-Addington L) for Mr. D. W. Smith

Wiseman, D. J. (Lanark PC) for Mr. O'Connor

Clerk: Mellor, L.

Staff:

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy

Minister, Labour Policy and Programs

Klein, S. S., Policy Adviser, Policy Branch, Labour Policy and Programs

From the Canadian Union of Public Employees, Ontario Division:

Nicholson, L., President

Trevelyan, M., Pay Equity Co-ordinator

Turner, L., Member, Women's Committee

Primeau, L., Member, Women's Committee

From the Ontario Government Libraries Council:

Walsh, S., Chairman

Louet, S.

Day-Feldman, S.

From the University of Toronto Staff Association:

Askew, D., President

Okada, N., Chair, Personnel Policy Review Committee

Hawkes, E., Executive Member

Meagher, S., Staff Researcher



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, October 2, 1986

The committee resumed at 2:09 p.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

The Acting Chairman (Mr. Partington): Ladies and gentlemen, we will open the proceedings for this afternoon. As a matter of record, Mr. Polsinelli asked me to extend to Mr. Gillies his apologies for not being here this afternoon. He is otherwise engaged, but he will use his best efforts to be at the next meeting.

Mr. Gillies: Having been detained in the standing committee on public accounts this morning, I am hardly in a position to comment.

The Acting Chairman: Our first delegation this afternoon is the Canadian Union of Public Employees, Ontario division. Welcome to the deliberations. Will you please introduce yourselves?

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO DIVISION

Ms. Nicholson: Do not feel too bad, Mr. Gillies, I have never sat here when there has been a full committee.

With me on my right is Linda Turner, who is a member of our women's issues committee and a member of our executive board for Ontario. On my extreme left is Louise Primeau, who is the chairperson of our women's issues committee. On my immediate left is Margot Trevelyan, who is on staff of the Ontario division of the Canadian Union of Public Employees as our equal opportunity officer.

Thank you for the opportunity to come before you today. I think you have our brief. I am not going to read the whole thing because when this is over, I am sure you will go through it meticulously. We will highlight parts of it and then we will be open to questions from you.

The Ontario division, of which I am president in Ontario, is the constitutional body within our union, which is charged with education and with the Legislature. Anything to do with the laws that govern us automatically come to the division within our structure and that is our responsibility in this province. We are authorized to formulate any policy that is dealt with by the Legislature with regard to our union and our members. We have about 3,000 members in Ontario who are direct workers and are paid directly by the government, such as our Workers' Compensation Board and Ontario Housing Corp. locals. They are the employees or our members who will be directly affected by Bill 105.

We are very pleased that the Liberal-New Democratic Party accord has resulted in this draft pay-equity bill and the amendments thereto that you are discussing here today. It is clearly a step forward that has been a long time in coming in the province. Yet having said that, our job has been made extremely difficult by the fact that no legislation has been introduced yet that will help the vast majority of workers in the province. I might add that we have about union 128,000 members in Ontario, a large portion of whom, probably the majority, are women. I think more than 50 per cent of our members in this province are women.

We have been consistently opposed to the idea of one bill for the public sector and another for the private sector. We understand there are different characteristics within the public and the private sectors and that could necessitate different sections to deal with peculiarities in the type of work. Defining a corporate entity might vary, or legislating the source of the pay equity funds. You might find some differences there.

Having said that, we believe the decision to have two bills is not based on that type of consideration. The way we have approached the situation is that different sections of one bill could accommodate them all. We have had repeated comments from the government that it intends to lead the way to pay equity. We also have to remember that the private sector has to remain competitive and that leads to some type of fear that the purpose of two bills is to accommodate two standards of justice. It is our fear that this is what will happen, that there will be one standard for the private sector workers and another standard for the public sector workers.

I am sure we do not have to tell you that we could never accept two differing standards. Workers are workers, whether they are in the private or public sector. Our union has always argued that. We have always argued that the rights and principles should apply to all working people in Ontario. We have worked on that through organizations such as the Equal Pay Coalition and the Ontario Federation of Labour and have consistently campaigned for good legislation that will cover all women, all workers in the province, whether in one sector or the other.

We are saying to you very clearly that Bill 105 does not answer that problem. It is not a public sector bill and it does not provide equal pay for work of equal value. It is a plan that will legislate a pay equity plan, and that goes only part-way towards ending wage discrimination in the civil service and a very few related agencies.

Two of those agencies are the ones in which we have workers. The employees affected by this make up about one tenth of the public sector work force, and that is less than two per cent of the population as a whole in this province. As I said, the vast majority of our members consider themselves public sector workers, and yet we find that only 2.5 per cent of them falls within this legislation.

We are making some recommendations to you today. We hope they will assist you in writing a bill which can really be said, in a much more realistic term, to provide equal pay for work of equal value in the full public sector. We believe the suggestions we are going to make to you will result in a bill that is much simpler and much more straightforward than the present one. Having said that, we also believe it would be much more comprehensive and would provide women in the public service a full measure of justice. It is the justice they have deserved for a long time.



I urge all of you to look at our recommendations and to give them good consideration, because we have done a lot of work on it. We are not appearing before you not having worked on it. We also ask you to press the government to introduce legislation that would cover all the sisters in the province and would bring some justice into the private sector, without any further delay. The women in the province have waited a long time for this to come. I know you said it is leading the way, but I do not think we are leading the way with this type of bill.

I am going to ask Linda to read the next page for you.

Ms. Turner: Thank you, sister. I am reading from page 3 of our submission the recommendations we have for equal pay for work of equal value.

Bill 105 does not provide equal pay for work of equal value. At no point is it illegal for the employer to pay less to people in female predominated work than to those in male predominated work. At no point, even after the proactive phase is over, can an employee complain to the commission that her job is of equal value to a male predominated job and should be paid the same.

Instead, the purpose of Bill 105 is to require the employer and unions to negotiate a specific pay equity plan. The plan is an end in itself. Once the plan is phased in, the law has been satisfied whether equal pay for work of equal value exists or not.

Unfortunately, the pay equity plan outlined in the bill will not lead to equal pay for work of equal value, because it insists on jobs being compared by job groups. The only jobs which are required to be evaluated are the benchmark jobs, and even they must be compared to the lowest-paid male job. Furthermore, no comparisons are possible for female predominated groups that are unfortunate enough to find themselves in a male job group. At no time do union representatives have an opportunity to compare the female predominated jobs in their bargaining unit to the pay rates of unorganized workers, including management, which might be of equal value.

We strongly believe that any pay equity legislation must make it illegal for an employer to pay less to female predominated work than to male predominated work in the establishment if the jobs being compared are of equal value, or to engage in a gender-biased compensation system. This is the only means we know of ensuring an end to wage discrimination in perpetuity.

The particular pay equity plan pursued, whether that outlined in Bill 105 or another, is irrelevant as long as the final end is equal pay for work of equal value for female and male predominated work and compensation systems free of gender bias. The equal value principle is enshrined in International Labour Organization Convention 100 and is part of every international agreement aimed at ending wage discrimination. It must be the foundation stone for any pay equity legislation in Ontario.

Recommendation 1: Bill 105 must make it unlawful for employers to pay less to female-predominated work than to male-predominated work which is of equal value or to engage in gender-biased compensation systems.

14:20

Eliminate the definition of "pay equity plan" in part II, section 7, and replace it with: "A pay equity plan is a proactive program to achieve a rate

of pay for female-predominated jobs in the establishment equal to the pay of male-predominated jobs in the establishment which are of equal value and to achieve compensation systems free of gender bias."

Ms. Nicholson: A phrase has been coined, I guess you would say; it is called the "broad public sector." I am not very sure what the broad public sector is. We would like to refer to it as extending this bill to the full public sector. I think it is a much better term. I am sure that is what it is supposed to mean, but that is a better phrase.

We are saying to you that, once amended to provide equal pay for work of equal value, Bill 105 could then become a true public sector bill. Once again, I am saying to you that as it now stands, it is absolutely not. It is a civil service bill; it is a direct-employee-of-the-government bill. It covers relatively few and excludes a very vast majority of the employees working in the public service. You will find those employees in the municipalities, the hospitals, the school boards and the universities.

I am sure I am going to miss a lot, so we stopped there and we said "many more" to you. I am sure you are aware of where those workers are. They have become, inevitably, a part of the provincial administration.

We give as an example that the responsibilities that a municipality exercises are limited specifically to those the provincial government sees fit to provide. The province determines the revenue sources made available to municipal governments. I know they then have the mill rate, but the main source is the transfer payments down from the government to the municipalities. The province may specify the way a responsibility should be exercised or may dictate the organizational form required to exercise the municipal power. Similar relationships exist between the provincial government and other public sector employers.

We are saying, too, that indirectly we are all employees of the provincial government, because you transfer payments down to the agencies, the commissions and the boards we work for. We have repeatedly reminded the government, the Tory government before the Liberal government, that workers in these establishments were certainly considered public sector workers when the 1982 Inflation Restraint Act and the program were brought into being. Our wages were held down accordingly, and there was absolutely no talk about our not being public sector employees at that time. That is what we were, that is where we were and that is the way it was, and we cannot understand why the game has suddenly changed. Why we would be included in the so-called private sector I fail to understand. I have yet to have a good explanation from anyone on it.

For those reasons, the recommendations we are making to you are based on the premise that this bill, once amended to provide equal pay for work of equal value and compensation systems free of gender bias, will be applied to the full public sector.

Our second recommendation to you is that, once amended to provide equal pay for work of equal value and compensation systems free of gender bias, Bill 105 be extended to cover all workers considered public sector workers under the 1982 wage restraint programs.

In our brief, we also go into definitions of "establishment." I am not going to read them all to you; I am going to read the first definition of an establishment.



To extend this bill to the full public sector will necessitate a more detailed definition of the establishment. The green paper on pay equity correctly identified this issue as one that is central for equal value comparisons. The definition must be broad enough to allow the vast majority of working women to find male-predominated work with which to compare their rates of pay. At the same time, it must be manageable enough to allow proactive pay equity negotiations to take place.

At this point I am going to ask Margot to summarize how we see proaction working.

Ms. Trevelyan: Linda Turner and Lucie Nicholson have highlighted the two central pieces, if you like, of our proposals, which are: (1) to amend the bill to make it unlawful for employers to pay female-predominated work less than male-predominated work which is of equal value; and (2) to extend the bill to the full public sector.

Because we do not have a great deal of time, I am going to go through this quickly. I am not going to be reading from the brief, but I will draw from different sections of it to say, first, what we find wrong with the bill as it now stands, putting aside the limited coverage, and, second, how we see it being drafted in a way which might offer equal pay for work of equal value.

You have heard some of these recommendations and criticisms before, but I would like to go through them again. Many of us do not understand the business of parts III to VI, having to compare within the bargaining unit, across bargaining units, in and out, around and under and all the rest of it.

On the first day, Dr. McAllister said that it was in the bargaining unit first so that the reps of that bargaining unit could get the best shot within their own bargaining unit first. We do not necessarily want to have the first shot within our own bargaining unit and there will be nothing to stop us from getting a comparison within our own bargaining unit first if there are others available as well. I know it takes less time to negotiate a plan within a bargaining unit than for the whole establishment, but in the end it takes less time to do the whole thing at once than to do this bit, then that bit and so on.

We see a further problem with the bargaining unit by bargaining unit method. If it is true that each bargaining unit files its plan with the commission, has it accepted and then goes on from there, what can happen in, say, a case where there are several bargaining units, as in the full public sector, if you have 10 different bargaining units and one decided on the Hay job evaluation system, another on the Aitken system, a third on Coopers and Lybrand and the fourth decided not to have job evaluation and so on, is that these will be filed and presumably duly accepted by the commission. Are these people then supposed to come to the table and try to make comparisons across these very different compensation systems? It just does not make any sense to us, and we do not understand it.

The only reason we can see in it is that the employer and the employees are being discouraged from making comparisons between the bargaining unit and management. It seems to me that the bill is designed not to rock the boat and to be seen to be providing pay equity without disturbing the status quo any more than is necessary. One of the great fears of employers is to have a job evaluation system which will perhaps determine that a member of the bargaining unit should be paid more than the supervisor to whom he or she is reporting in

management. This bill appears to be designed to ensure this does not happen, because it will be so difficult to make those comparisons across bargaining units that, by the time the separate plans have been filed, people will have almost give up.

We realize that with the management and unorganized workers there is supposed to be a compulsion on the employer to consult with the unions. Consult does not mean anything to us. It may as well not be there. It can happen like this: The employer calls in the union and say: "This is the plan I am planning on using for the establishment of the whole. What do you think of it?" The union representative may say: "I do not like it. I see a lot of problems with it." The employer could say: "Thank you. Goodbye. Close the door on your way out."

That is the end of the consultation process. To require an employer simply to consult with the unions rather than to negotiate with them--it may as well not be in there at all.

On the first day, some of you said: "We realize it is a complicated process. Show us how it can be done more easily." We hope our proposals will show you how it can be done much more simply and make the bill much more effective. This is how we see the whole procedure working.

The bill would simply say that employers must implement within a certain time equal pay for work of equal value and compensation systems free of gender bias. They would be required to negotiate those systems with their unions, where they existed. The employer would sit down with representatives of all affected bargaining units at one table. All information about the work place would be put on the table. Job data about management jobs, unorganized workers' jobs--all the jobs in the different bargaining units--would be laid out on the table.

All the information would be made available to everybody involved in the consultation process. As a group, they would then decide how to implement a gender-free compensation system across the whole establishment for those within their own bargaining unit and for those outside the bargaining unit. That would be decided as a committee. People who were representing a specific bargaining unit would be given the opportunity to find equal value comparisons within their bargaining unit, in other people's bargaining units, amongst unorganized workers and amongst management.

14:30

Once that had been determined, after three months there would be an immediate payout. We have suggested a formula in this brief that I can go into in more detail during question time if you like. There are various ways this payout can be done with all the equal value plans being implemented across the work place, but we would like an immediate payout within three months of the date when negotiation starts or if it has to go to arbitration within the six months.

When the plan is filed with the commission and if necessary, arbitrated, there would be immediate payout. Again, the intent is to put money into the pockets of people immediately. Once the plan is accepted by the commission, the employers and the unions would then have 18 months to implement it. At any time during the design or implementation of the plan, any employee or his or her representative should be able to complain, first to the negotiating team



in writing, and if he or she did not get a satisfactory response, to the Pay Equity Commission that the plan would not result in equal pay for work of equal value for one or more jobs in the establishment.

We agree with many of the presenters who have appeared before you who have said that it is not fair to expect an employee to have a detailed understanding of the system that is being used to make the kinds of complaint that are outlined in the bill. We feel that all a person should have to do is to be able to go to the team and say: "Look, I do not understand all of what you are doing. All I know is that when I look at this job"--probably her own--"it is not going to end up getting the pay that it should when you compare it with that male job over there. Something is wrong and I want it corrected."

If the bargaining team does not listen to her or does not give her a satisfactory response during that time period, she should have the right to go to the commission and say: "This is what the bargaining committee has agreed to implement in the work place. It will not result in equal pay for work of equal value for my job. I want something changed." She should not have to know anything about job evaluation or whatever technique is being used to evaluate these jobs.

The commission should look at it, decide whether the complaint is valid and if it is, go back to the bargaining committee and say: "I am sorry, you are going to have to make a change here. It is not going to result in equal pay for work of equal value. It therefore is not a valid pay equity plan."

We call that kind of complaint a pay equity complaint in that it would not result in immediate pay adjustment to that employee. It would result instead in a change to the pay equity plan if the complaint were upheld.

We would then ask for a second payout to come at the end of the implementation period. After the plan was in place, after equal pay for work of equal value had been achieved, targeted properly and the payouts had gone, if an employee found that her job still was undervalued, she would have the right to complain directly to the commission, in the same way that people complain to the federal human rights legislation, that her pay was not valued properly compared to the value of a male job of comparable value.

Because of some of the comments that have been made at some of the presentations thus far, I would like to take a few minutes to deal with some of them. It was suggested by the Board of Trade of Metropolitan Toronto and a few others that it would not be necessary to make comparisons across bargaining units. They said they could almost live with pay equity if the comparisons were only within the bargaining unit. To us in the full, broad public sector, whatever you want to call it, if there are no comparisons across bargaining units, there are no comparisons for the vast majority of our members. We need comparisons across the bargaining units.

I refer you to this blue sheet, which is a photocopy of the last few pages of our submission to the Consultation Panel on Pay Equity. Take a brief look at the work profile of the Peel Board of Education, particularly at the bottom four or five units. These are all separate bargaining units.

We have one bargaining unit of 12-month secretaries. Of these, 99 per cent are women. If these women cannot compare their jobs to jobs in another bargaining unit, they cannot make a comparison. The 10-month secretaries are

100 per cent women. They are their own bargaining unit. They have to be able to find someone in another bargaining unit to compare to. Custodial and maintenance are 100 per cent male. The cleaners are 94 per cent women. The teachers' aides are 95 per cent women.

Perhaps you will look at some of the other profiles. Take a quick look on the next page at the Toronto Board of Education. Caretakers are 91 per cent male. Food services, which is a different bargaining unit, is 100 per cent women. The engineers, another bargaining unit, are 99 per cent male. Clerical workers, another bargaining unit, are 99 per cent female. Machinists are 100 per cent male, and so on. If you do not give us a bill that will allow us to cross-bargain units with comparisons, we do not have a bill. I cannot impress that on you strongly enough.

I would like to deal with some of the problems raised by Mr. Mitchell and others during the presentation by the Board of Trade of Metropolitan Toronto. There was concern about what you do if you get pay equity between bargaining units and then one unit tries to negotiate itself out of the pay equity adjustment or settlement or value comparison.

First, we should point out that in the public sector, with very few exceptions, it is very rare for one bargaining unit to get a wage increase that is substantially different from another. Usually there is a trendsetter. For example, within municipalities, one municipality will set the trend and that will be the trend for others. There is a certain amount of consistency there.

Second, employers already have to take into account the implications of a wage settlement on other bargaining units in their establishments. To give you an example, when I was on the CBC task force on the status of women, we were at head office talking with the then vice-president, Guy Coderre. He was called to the phone by the negotiators in Toronto who were negotiating with the National Association of Broadcast Employees and Technicians. I think at that time the CBC had 17 bargaining units. He came back and said: "NABET wants eight per cent. I really would not mind giving it to them, but I know if I give it to them, I will have to give it to everybody else. I just cannot do it."

Those considerations are already in the minds of employers. Employers will just have to think of the implications of wage settlements when equal value comparisons come up. Also, bear in mind that in most cases a bargaining unit will not necessarily have every job involved in the pay equity plan. Just because one bargaining unit gets five per cent, it does not mean all the other people in the other bargaining units have to get five per cent. It may mean that the jobs deemed to be of equal value to some of those jobs have to get five per cent to stay in the pay equity plan. Lucie Nicholson can explain more about how that process goes on.

We should point out that centralized negotiations now are happening more often, both as a desire of management and the unions. We find this in our union. Centralized bargaining happens now with hospitals. Last year, the school boards in Metropolitan Toronto bargained centrally. That is a trend and will happen more and more.

I would like to comment on the one per cent of payroll a year. I know that one per cent came from Minnesota originally. I am not sure why they decided on one per cent, whether it was an arbitrary figure. If it was arbitrary, could we not make it arbitrarily 10 per cent or 50 per cent? Why on



e per cent? At the work places I have looked at where I have actually designed pay equity plans for specific establishments, just to equalize the base entry rate in municipalities, for example, would take five years with that one per cent of bargaining unit payroll per year. That is before we even begin the equal value comparison. At one per cent of payroll a year in those establishments, it will be the year 2000 before equal pay for work of equal value is ever realized.

We have proposed three per cent of payroll a year. I would prefer to have seven per cent or eight per cent, but we managed to restrain ourselves to three per cent.

Another question that has been raised in your committee is how we would see the role of unorganized workers in pay equity negotiations. We have given this a great deal of thought and I would like to comment on it.

Last week, it was either Evelyn Gigantes or Brian Charlton who commented that in the democratic process we like to make sure everybody is represented. That is what we believe in and it is part of the democratic process. Our difficulty with that is how do you know when somebody says he is representing somebody that he really does. In Ontario and most jurisdictions, there is a very complicated certification process that must go on before any people can say they represent members of an employee group. A certain number of cards have to be signed within a certain time period and somebody has to rule on that. If there is any flaw in the way the organizing was done, the whole thing is invalid and must be started over again. That is the way we know these people represent the people they say they do.

We are concerned there might be the following scenario: If unorganized workers have employee representatives, what is to stop the employer or management from saying: "Hey, Bill, we are having some pay equity negotiations in a couple of months. How would you like to represent the unorganized workers? By the way, did I tell you that job promotion you were thinking about might be coming up in a couple of months? Why do we not get together and talk about it?"

Whose interests is that individual going to be representing at those pay equity negotiations? Will he be representing the interests of the unorganized workers or the interests of management? If you can think of a way in which unorganized workers can have representation without a union to ensure that the interests of unorganized workers are sincerely represented, we will be the first to embrace it.

14:40

We spoke to our counterparts in the United States to ask them how they deal with unorganized workers in establishments. They said they found the desire by the employer to keep out unions was more than enough to guarantee that the rates of pay of unorganized workers were adjusted properly in pay equity negotiations. We suspect that is what would happen. It is not that we do not want unorganized workers to be represented, but we do not see any possible way they can be in a way that will guarantee their interests are really represented.

We are talking about a work place where there are some unions. Once the wages are adjusted, we are pretty sure the unorganized workers will get similar settlements because that is often what happens now. The most obvious

example is Stelco and Dofasco in Hamilton. Stelco is organized by the United Steelworkers and Dofasco is an unorganized work place. Once the steelworkers negotiate a rate of pay with Stelco, Dofasco immediately implements exactly the same pay increase. The reason is to keep out the union. We have no doubt a similar process would take place in pay equity negotiations.

The other thing I would like to mention is the exclusions in section 8. I caught the final end of the presentation of the National Action Committee on the Status of Women and I think the point it made is a very important one. This legislation is supposed to be adjusting rates of pay for jobs, not people.

What difference does it make if the person is part-time or rehabilitation or a student? For example, if a student position requires more supervision, more training or less experience, that job is rated accordingly. It does not get paid as much as other jobs. There is no reason to exclude them from the evaluation process. They will just be evaluated less. It is the same with rehabilitation positions and so on.

There is a problem when you begin to introduce exclusions. Let us take the case of some of our collective agreements. We have some part-time workers whose benefits are gauged according to how long they work. If they work 1,000 hours per year, they may get vacation pay at four per cent of their annual salary. If they work 2,000 hours, they get eight per cent of their annual salary. To save money, the employer often makes sure a person never reaches the 2,000-hour rate. Instead, the employer hires more part-time workers. This situation makes it very difficult for the part-time worker who needs the extra hours, but it keeps costs down for the employer.

Once you introduce any kind of exclusion like that into the legislation, it opens up the same loopholes for pay equity negotiations. All you have to do is say: "The bill says that as long as a person works less than X number of hours, they are not covered by the bill. If I need more hours, I will just hire somebody new. I will keep this person, but I will not give any more hours."

The problem with exclusions is, first, they are not necessary because those kinds of jobs listed in here will already be evaluated less under any kind of evaluation system, and, second, the only purpose they serve is to open the door for loopholes for the employer.

Finally, regarding the funding of these, our members feel very strongly. Most of our members work in service places such as hospitals, day care centres, homes for the aged, community centres, that kind of thing. They are extremely concerned--they have raised this with us numerous times--that they do not think the ill, the elderly, children, emotionally disturbed people and the rest should foot the bill for pay equity. Transfer payments are already very tight.

I went to a curriculum night at my son's school the other night and after meeting his wonderful teacher for an hour, she said, "I am very embarrassed to have to ask you this, especially on our first meeting, but our budget is gone until next January and I have to ask each of you for \$20 so that the members of this class can go out and finish their excursions for the rest of the year."



She also said the ventilation in the room was very bad and she had asked for fans. The school said it could not afford them; so she bought two of her own. I could give you a whole list of other things she has brought in from her own family to do what she felt was an adequate teaching job. I was shocked as a taxpayer. I had to start feeding her extra little sums so they could do what the school program thought was necessary.

We want to make sure these pay equity adjustments come directly from the provincial government above and beyond existing ceilings for transfer payments. These should not be part of existing ceilings. If they are, they will come from children, from the elderly and from the ill, and that is not what we are after.

That is all I want to say at this point, except to say perhaps that yesterday the Ontario Public Service Employees Union presented a very imaginative proposal in many ways. Ms. Gigantes and Mr. Charlton correctly identified that there was a missing link in there between the quick fix and the complaints procedure. After all, if you are going to complain, you have to have something to complain about. We believe our proposal provides that missing link. We also believe that by telling you that we want it to be made illegal to pay women less than men for doing work of equal value, we are telling you what we need in the legislation so we can do the various types of things in the work place we want to do.

Some people may want to begin by equalizing base rates and some might decide to do blanket job evaluation. I could give you a whole list of different ways one can go about this type of thing. It is not necessary to tell us what we have to do. If you look at the profile of any work place, what needs to be done jumps out at you, but you cannot see it necessarily in this committee room. Just give us a bill, tell us what the bottom line is and leave it to us to negotiate how to get there.

Ms. Nicholson: Since the beginning of this year, we have heard from the present government that there is a great need for a broad consultative process before good pay equity legislation can be brought in. Though we have questioned the need for more consultation, because it appears we have been consulting with the previous government and now with this government, we have entered into that situation in good faith and we have allocated a considerable amount of our resources in doing this. One of the pluses for us is that we have hired Margot Trevelyan.

In this submission, we have highlighted some of the issues we believe are central to ending discrimination against women in this province. Our position on other pay equity questions is included in this submission. We have also attached our submission to the Consultation Panel on Pay Equity. We believe that if you accept our recommendations, they can result in a bill that can bring justice to the women in this province and to the public sector. As I say, it could act as a type of model for private sector legislation in the province. Something which has been happening in this province, that is, women being undermined by the employers of this province, will stop and they will get their justice. They are a very valid part of the work force.

I have not left too much time for questions, but we will gladly answer any you have.

Mr. Wiseman: I am not sure I heard you correctly. You were going pretty quickly for a minute.

Ms. Trevelyan: We have only an hour.

Mr. Wiseman: When Mr. Clancy was here yesterday, he mentioned that you could have, if I am correct--and maybe some of my colleagues can correct me if I am not--a number of bargaining units dealing with one employer and you might have anywhere from, say, five, six or seven per cent down to three per cent. You are saying they would probably look at one and then pay all an equal amount.

If I were an employer and I was going to pay everyone five or six per cent, or whatever it is, why in the dickens would I deal with five different unions when I could lump them all into one and deal with one? I would not have to go all through it five times. Are you not destroying the bargaining units of the other four unions? Is the employer not going to go for one union looking after all its employees? It just seems different from what Mr. Clancy told us yesterday. I believe it was Mr. Clancy.

14:50

Ms. Nicholson: In Saskatchewan, the Service Employees International Union and the Canadian Union of Public Employees sit at one table when they negotiate for the hospital workers. There are two unions involved, and we agree and we sit at one table.

The hospital workers in Ontario, who have 20,000 CUPE members, sit at a central bargaining table and we deal with the Ontario Hospital Association at one table. I am not sure how many of our local unions are involved in that, but we have 20,000 members across the province who sit at one central table and deal with one group of employers. There are possibilities that unions can sit at a table together.

Mr. Wiseman: So I am clear, are you saying something different from what Mr. Clancy was saying yesterday, because I think he said that--

Ms. Nicholson: I think our emphasis is different.

Mr. Wiseman: --there are six bargaining units within the Ontario civil service. There used to be seven and I think they are down to six.

Ms. Gigantes: Eight.

Mr. Wiseman: Or eight and down to seven. He could see a place for all--I think he gave an example of four or five that might be dealing with one employer. If I were an employer and, as you say, if I was going to give everyone an equal five or six per cent, whatever it was, I would try to encourage that there be one union. I would deal with one group and would not have to go through and spend good time negotiating six different times on behalf of my employees. I know you have said there are one or two who sit down at the bargaining table, but Mr. Clancy did not seem--it would be a threat to unions down the road if they followed your procedures.

Ms. Nicholson: I was not here when Mr. Clancy was here yesterday so I cannot speak for him. Maybe Margot Trevelyan can answer that a little more. We have more than those two. For instance, in Metro Toronto we have boards of education where we have 17 local unions dealing with the boards and sitting at the central table. We deal with the different boards, but at one table. When we started that this year, it was the first time we did it and it worked very



well. That is one union, but there are 17 different local unions, all autonomous local unions.

Mr. Wiseman: But they are all members of the same union.

Ms. Nicholson: They are all Canadian Union of Public Employees.

Mr. Wiseman: For bargaining, they all belong to the same whatever it is.

Ms. Trevelyan: In negotiations, it does not matter whether it is the same union if they are different bargaining units.

If I can get back to Mr. Clancy's concern, it was that the legislation would require comprehensive job evaluation across several bargaining units. Ms. Gigantes pointed out to him that was not what we were talking about, but rather the evaluation of female-predominated jobs that are undervalued plus any male-dominated jobs that may be necessary for comparison purposes. He accepted that would not destroy the bargaining unit and would be quite possible. I guess that is how we see it happening.

The scenario you propose, which is an understandable concern, presupposes that all positions in the establishment will have to be evaluated, which we do not see as the case. I will give an extreme example to make it a little easier to understand what I am getting at. Let us say you have a construction company where there are approximately 30 male-dominated jobs, carpenters, electricians, bricklayers, whatever people need to do to build a house. In that construction company, there may be two or three female-dominated jobs, a receptionist, a clerk-typist and a secretary. All the law would require would be that those three female-dominated jobs receive equal pay for male jobs that are of equal value. To find those male jobs, I know as someone who has done this several times that it is not necessary to evaluate all the male jobs. You may have to evaluate four, five or six to find the three that are comparable, but you do not have to do all of them.

In that situation, if all those 30 male jobs were in one bargaining unit, the fact that he had to pay all those jobs six per cent might require him also to pay those three female jobs six per cent to keep them of equal value. We do not think that requirement destroys the bargaining unit at all. In fact, it goes on all the time now. As with the Canadian Broadcasting Corp. example that I gave, once an employer gives an adjustment to one, the implications of it on another are taken into account.

Mr. Wiseman: That is a little different example that you gave this time from what you gave in your opening remarks. It is good to know Mr. Clancy and Ms. Gigantes agreed on something yesterday. I did not think they could agree on much. I thought maybe they would get together. have lunch and discuss what they could agree on.

The Acting Chairman: Can I move ahead now to Mr. Gillies?

Mr. Gillies: That was an excellent brief. I thank you for it. There were a number of key points that certainly our party agrees with you on, particularly the question of extended coverage.

Ms. Trevelyan: To the private sector? Is that what you are referring to?

Mr. Gillies: I am referring to the broad public sector, as we have called it, or the full public sector, as you have referred to it. We agree again on the question of the exclusions and on the need for some kind of sanction or penalty power for the commission.

I want to ask you specifically about two things. First, you identified the problem of the representation of nonunionized employees, and we recognize that as a problem too. I wonder whether you have any suggested solutions to that one. We had one presentation that touched on the method used in Manitoba, where I gather there are people appointed to represent the nonunionized employees, although I must say I forget who appoints them.

Dr. McAllister: No.

Mr. Gillies: No?

Dr. McAllister: In Manitoba in the broader public sector, you have a provision for the election of employee representatives, who are employees who would be eligible to be certified under the Manitoba Labour Relations Act. Thus, it is people who potentially could be unionized, but are currently not.

Strictly speaking, management employees will not be able to elect employee representatives. I should note that Manitoba just started the implementation in the broader public sector on October 1, but it has not yet produced the regulations to identify how that election process is to take place. However, I do understand there have been some talks between the parties in Manitoba. Maybe some of your members have been involved in those talks and would know how it has been going, but there should be some model for Manitoba on that short list.

Mr. Gillies: How do you react to the idea of nonorganized employees electing their representatives? Do you think it is workable?

Ms. Trevelyan: If it were, that is the way our labour legislation would be now for unions. All you would have to do would be to get people together and elect them. The fact that it is not would seem to indicate that this is not a satisfactory way of assuring that these people are responsible to the people they purport to represent.

We are in a difficult position. We do not want to be seen to want to have all the say at the bargaining table and these people who are not represented not to have any say; but we just do not see any way they can in a way that can be assured to represent their interests.

Mr. Gillies: I agree with you that there is a problem here. I just wondered whether anyone had any thoughts about what we might do about it.

Ms. Trevelyan: What we have proposed is that they just be represented by the employer, which is what we think would happen in most cases anyway, even if they did elect people.

Mr. Gillies: Okay. The only other question I have, and I guess I should ask you, Dr. McAllister, although you raised it, is about the one per cent per year. Where did that come from? Was it just arbitrary? Did you look at precedents or--



Dr. McAllister: Why Minnesota chose one per cent initially, I frankly do not know, but we do know that implementing pay equity in the narrow public service, similarly to the Bill 105 coverage, cost them about 3.7 per cent of total payroll in the end. Regardless of why Minnesota may have chosen one per cent initially, it ended up costing less than four per cent.

In looking at the sizes of the wage gaps in the public service in Minnesota, Manitoba and Ontario, you do see some similarity in terms of where you are starting out from in attacking the pay inequity problem. It was on this basis that we assumed it would be about a four per cent gap and that one per cent of payroll over however many years it would take would be an appropriate way to address the problem within about a four-year period. That is the reason for it--the Minnesota results.

Ms. Trevelyan: I can see that if you accept pay equity as Bill 105 currently defines it, you may conclude from that that the pay gap represents about four per cent. If you look at equal pay for work of equal value adjustments that we see as necessary, certainly in our bargaining units, it is closer to 15 to 22 per cent.

One per cent of payroll a year, as I have said, would mean that we get equal pay for work of equal value around the year 2000. Clearly a question this committee has to decide on is, are you really talking about equal pay for work of equal value here? State it very explicitly in the legislation. If you are, then I am just saying that one per cent of payroll a year over four years will not provide it.

15:00

Mr. Gillies: I know time is very short, so I will leave it at that.

Mr. Wiseman: Dr. McAllister, I have a question. Did you say that the Minnesota one and the Manitoba one were locked in for four years, but ours may go to four and a half years where we may have almost five per cent?

Dr. McAllister: That is right. If a five per cent pay gap is identified, then it will be redressed during our proactive period. However, based on the experience in Minnesota and our knowledge of the size of the overall gap in the Ontario public service, what it was in Minnesota and what it is here now, we feel fairly confident that it will be approximately four per cent of total payroll. It could be less or it could be a bit more.

Mr. Wiseman: Just to clear it up in my mind, is that one per cent of the total payroll?

Dr. McAllister: Yes.

Mr. Wiseman: It is not one per cent of what we have identified in the female classification?

Dr. McAllister: That is correct. One per cent of total payroll will be put towards compensation adjustments.

Mr. Wiseman: So it is a lot more than it appears.

Dr. McAllister: It is \$88 million.

Mr. Wiseman: It is one per cent of the total male and female payroll.

Dr. McAllister: That is right. In fact, in Minnesota it resulted in adjustments to some female jobs of 15 per cent to 20 per cent because the four per cent of total payroll put against only the predominantly female jobs will raise those jobs 10 per cent to 15 per cent for the ones that are found to have discrimination.

Mr. Wiseman: I wonder if our witnesses realize that it was not just one per cent of the--

Ms. Trevelyan: I have a question about that, actually. My reading of the bill is, and I was here for your explanation, Dr. McAllister, on the first day, that pay equity plan 1 comes in for the bargaining unit, you get one per cent of bargaining unit payroll for them. Then plan 2 comes in, and if it was across two bargaining units, you would have one per cent of two bargaining units' payroll for adjustment. Is that right?

Dr. McAllister: No. It is partly right. With the first adjustments which, under the current timing of the bill, will be approximately two years from the effective date, two per cent of total payroll will begin to flow from the employer towards compensation adjustments. That will be divided proportionately according to the proportion of payroll accounted for by each bargaining unit and the management group separately.

The one per cent of payroll as an obligation by the employer to pay out every year of the proactive period continues on. The section 11 phasing and allocation of that adjustment just keeps the one per cent flowing to different units and keeps it always flowing. The employer will always be paying out one per cent. I agree it is an extremely complicated section, but it keeps that one per cent flowing.

Ms. Trevelyan: But it keeps it flowing in pieces, does it not?

Dr. McAllister: It keeps it flowing in pieces according to the employees in each pay equity plan. The coverage of the plans gets more expansive as you move through the proactive period, but one per cent will always flow. I should say it will be two per cent of total payroll in compensation adjustments going out with the first adjustments because it is an accumulated liability.

Ms. Trevelyan: If you discard the idea of doing it bargaining unit by bargaining unit, then you also discard the idea of having one per cent of bargaining unit payroll. Even without that, it seems to us illogical.

For example, in the profile I have given you, teachers' aides, 95 per cent of whom are women, are probably among the lowest paid of all workers at the school. They earn less than bus drivers. Because their pay is the lowest, their bargaining unit payroll per head proportionately is the lowest, so they have the least money available to them. Management, whose salaries are higher, presumably need the money least under this legislation, but they have the highest payroll available to them. That seems a little strange to say the least.

Dr. McAllister: I should note that in the organizations covered by this bill we have a very limited number of bargaining agents in each, but if it were found in your example that the management group required a very limited pay adjustment, then the money that would have been allocated to that group would be turned over to the bargaining unit for their adjustments.



Ms. Trevelyan: It does not say that in the law.

Dr. McAllister: It does.

Ms. Trevelyan: Where?

Dr. McAllister: I will show you afterwards.

The Acting Chairman: I wonder if we can carry on with Ms. Gigantes, who has some questions.

Ms. Gigantes: I will try to be brief. You talk about equal pay for work of equal value for women in predominantly female jobs. I am trying to understand whether you mean the same thing as the Equal Pay Coalition when it talks about women's work or whether you mean the definition of pay equity that we have in Bill 105, where you accomplish what is called pay equity when women in 60 per cent female-dominant groups are compared with men?

Ms. Trevelyan: No. As a union member who had an active role in the formulating of the Equal Pay Coalition's brief, I assure you we do not mean what Bill 105 says.

Ms. Gigantes: When you say "female-dominant," you mean even as low as one person in a job level, for example?

Ms. Trevelyan: That is right. What the coalition was saying and what we are saying--we are not saying that it may not be useful to the negotiators to agree that 50 per cent, 40 per cent or 60 per cent may be a useful way to approach the problem. We just do not want it entrenched in the legislation. Once it is entrenched in the legislation, even though the legislation says you can negotiate for other things, because it is entrenched, the implication is you have to show extraordinary circumstances to explain why a particular job should be included. We would rather not do that.

I wish we had more time. I could give you some specific examples from work places we have looked at. For example, in municipalities where we have inside workers being predominantly female, the bargaining unit is predominantly female. Outside workers are in most cases about 90 per cent male. There are lots of male-dominated jobs in the inside workers' bargaining unit. We would like to say it is clear that if you look at the history of this bargaining unit, the reason this entry rate is so much lower is that originally this bargaining unit was only for women, which is what many of these units were. As time went on and men started being employed in some of these inside jobs, they were thrown into this bargaining unit, but the rates of pay still reflected the fact that this was originally women's work paid at a women's rate at the time when it was legal to pay women less than men. We would like to say that.

For purposes of negotiation, let us say that all the inside bargaining unit are in female-predominated jobs, even if several of them have 100 per cent males in them. Their rates of pay reflect that. We do not want to have to explain for every single job why a gender-biased wage rate should be considered, even though it is not 60 per cent women.

Ms. Gigantes: When we look at the comparison between your presentation today and yesterday's presentation by the Ontario Public Service Employees' Union, essentially what each of you is saying, I think, is: "Give

us a framework in this bill and we can choose within each work place what is going to be appropriate for the workers we represent. That is the way we will discuss it with management to set up a plan." I think that is what is critical about what each of you is saying.

The thing that struck me too about what I called yesterday the middle section of OPSEU's approach was that perhaps all one has to do in the end in legislation is suggest a high enough payroll contribution by an employer each year, mandate it. If you make it three per cent, it will not benefit the employer to string it out. We can say: "You may as well get it over with. You are going to have to put in three per cent of payroll every year anyhow. In fact, if you put in seven per cent, you might get it done in six months."

Ms. Trevelyan: As long as the legislation made it clear who that money is to go to. If you are objecting to a fixed gender predominance, as we are and as the coalition is, then that problem has to be addressed.

Ms. Gigantes: Yes.

The Acting Chairman: Thank you for your presentation.

Ms. Nicholson: Thank you. You have been a very attentive committee. Since 1969 my union has been involved in the status of women. I was involved then and I would like to see it all finished before I retire.

Ms. Trevelyan: Amen.

15:10

The Acting Chairman: Our next delegation is the Ontario Government Libraries Council. Welcome.

#### ONTARIO GOVERNMENT LIBRARIES COUNCIL

Ms. Walsh: Thank you very much. I am Sandra Walsh, chairman of the Ontario Government Libraries Council. On my left is Sandra Louet, chairman of the pay equity committee, and on my right, Sharon Day-Feldman from the pay equity committee of the council.

The Ontario Government Libraries Council was created in 1970 by order in council to promote co-ordination and exchange of information between Ontario government libraries, as well as to foster excellence in library management. We are a body consisting of the heads of more than 60 libraries in ministries, agencies, boards and commissions of the Ontario government. Our aims and objectives are set out in our constitution, which you see attached as exhibit 1, along with a list of our members in exhibit 2 and a survey of member libraries, exhibit 3.

We appreciate the opportunity you have given us today to make our comments on Bill 105. We believe it is appropriate for the council to make this submission because our libraries are staffed by librarians and library technicians, most of whom are women. Our profession has always been and continues to be female dominated. A survey we conducted in 1983 indicated that 83 per cent of our 200 librarians and library technicians were female, as shown in exhibit 4.



We would like to emphasize that the profession of librarianship in government has changed dramatically in the past few years. Libraries have become dynamic, proactive service centres that anticipate and respond to highly specialized information needs of specific clientele. Ontario government libraries have made quantum leaps with the introduction and implementation of new information technologies. Computerization and telecommunications are commonplace in our libraries. The skills, knowledge, judgement, accountability and management required to implement and use these technologies are not reflected in our current pay scales for librarians and library technicians.

There is a general lack of awareness of what constitutes a librarian. Complicating the issue further is the fact that in recent years library technicians have arrived on the scene. A librarian has a post-graduate degree in library science from an accredited university. A library technician has a diploma in library arts or library techniques from a community college. Responsibilities of librarians include personnel management, budget planning and administration, policy formation and other management duties, as well as the collection and organization of library material and the provision of information or a reference service.

Library technicians occupy a position of responsibility between that of a librarian and a clerk, normally working under the supervision of a librarian. A library technician may be responsible for the section of a library or may even be in charge of a small library where maintenance rather than management of the collection is required.

Our comments on Bill 105 are as follows: The Ontario Government Libraries Council fully endorses the efforts of the Ontario government to implement pay equity through Bill 105. In 1974, we began our attempt to redress pay inequities in our group. We did this by approaching the Ontario Civil Service Commission, requesting that the class standards for librarians and library technicians be updated. Last revised in 1966, the class standards were eight years old at the time and did not reflect the work done in libraries. Since 1974 we have made countless, unsuccessful attempts to effect changes in the class standards. These attempts are documented in a chronology of communications between the Ontario Government Libraries Council and the Civil Service Commission in exhibit 5.

Today the class standards for librarians and library technicians are 20 years old. They do not describe the complexities of the work we do or the education and skills required to do it. Yet it is on the basis of these standards that we are classified and our pay is determined. As a result of the failure of the Civil Service Commission to address our concerns, these inequities remain. Based on the current system, we are not able to achieve equal pay for work of equal value. Therefore, we look to Bill 105 to correct this.

It is appropriate that Bill 105 deals first with the Ontario government. There are long-standing examples of pay inequities in the Ontario public service. We believe these inequities should be addressed first before extending such coverage to the private sector.

The private sector will be affected by pay equity legislation. Regular libraries in the private sector look to Ontario government libraries for guidance in setting their salaries. We receive frequent telephone calls asking for the Ontario government pay scale for librarians and library technicians so the private sector can be sure it is matching our salaries. We consider that since the Ontario government is used as a model, it should be an exemplary one.

We are concerned about the mechanisms for achieving pay equity. What description will be used for purposes of comparing work done? We strongly recommend that actual job descriptions be used to describe what we do, rather than using the existing and outdated class standards. Using the outmoded standards would only serve to perpetuate the pay inequity.

Will small groups be affected by Bill 105 as quickly as larger ones? It has been suggested by the Civil Service Commission that our small size was a major reason for our being put aside over the years while larger groups, considered more important because of their numbers, were updated. Because we are a group of approximately 200 persons, we would like to be assured that implementation of pay equity will not be delayed because of our comparatively small numbers.

To summarize, we recommend that Bill 105 be proceeded with for Ontario civil servants and that it not be deferred in order to cover other agencies and the private sector; that current job descriptions be used as the basis for job comparison rather than outdated class standards; and that the pay equity principles be applied at the same time for all groups within the Ontario public service, both large and small.

In conclusion, the Ontario Government Libraries Council strongly endorses the efforts of the Ontario government to implement pay equity in the civil service through Bill 105. We thank you for providing this opportunity to voice our support as well as our concerns. We look forward to seeing Bill 105's effects.

You may have some questions for us.

The Acting Chairman: Thank you. Are there questions? No questions?

Ms. Gigantes: Perhaps I can ask, do you know you are the only group that has presented that has been happy with Bill 105?

The Acting Chairman: Mr. Polsinelli should have been here this afternoon.

Ms. Louet: There are copies of our presentation.

Ms. Hart: He will be sure to see it.

Ms. Gigantes: Seriously, were you aware of that?

Ms. Walsh: No. From hearing the end of the previous group, I gathered that was a possibility.

Ms. Louet: Did you say we are the only ones who are happy with it?

Ms. Gigantes: Yes.

Ms. Louet: Maybe it is because we are not lawyers. We do not understand.

Mr. Gillies: Actually, I think the lawyers are delighted with the bill because nobody else understands it.

Ms. Gigantes: Does it worry you that you do not understand it?



Ms. Louet: Yes, in a way it does, but we wanted to voice our concerns in any case. We tried not to get into the legal aspect but just to voice our concerns.

Ms. Gigantes: However, you would prefer a bill you could understand.

Ms. Walsh: I think it is fairly understandable. I think you may possibly be referring to the legal language.

Ms. Louet: It is vague.

Ms. Walsh: Yes. It is understandable, but it is vague.

Mr. Mitchell: May I interject? Following along on what Ms. Gigantes said, I think one of the first groups we heard this week said it found that the bill--I am going to paraphrase--basically was not in terms that a layman could understand. You have reinforced that, although I gather what you are saying is that you support the direction the bill is attempting to go, rather than the bill in the sense of all its wording and so on.

Ms. Walsh: Yes, the intent of the bill and the direction.

Ms. Gigantes: Your association is not an organization in the sense that the Ontario Public Service Employees' Union or the Canadian Union of Public Employees are in dealing as bargaining agents with your employer. Your group will be treated in round 3 of the plan?

Ms. Day-Feldman: No, that is not true. A large percentage of our people are bargaining unit people. We have bargaining unit and management people as our members.

Ms. Walsh: We have a combination.

Mr. Charlton: Did you just say you are not a bargaining agent?

Ms. Walsh: No, we are not an agent.

Mr. Charlton: Not in the way that CUPE and OPSEU are.

Ms. Walsh: That is correct, but we do have a mixed membership.

Ms. Day-Feldman: Both bargaining unit and management.

Ms. Gigantes: Are there people who work in your libraries who are not organized, aside from your association?

Ms. Walsh: There are clerks in some of the libraries. Mostly they are library technicians and librarians who are not in management who are in the bargaining unit, and some clerks, but not as many as in the past. Library technicians have taken over the more clerical aspects of the work.

Ms. Gigantes: Can Dr. McAllister explain to us exactly where this group fits into the bill?

15:20

Dr. McAllister: It seems it is a mixed group in that some of its members will be covered under the bargaining unit pay equity plan and others of its members will be treated in the first instance under the nonbargaining unit plan, but all its members will be treated under the comprehensive pay equity plan. They would be treated separately and then together, depending on the functions of their members, including librarians and technicians and the gamut of workers in libraries.

Ms. Gigantes: Can we identify how quickly their situation as an association would come up in all these rounds?

Dr. McAllister: All their members would receive some treatment at approximately the two-year mark. While the separate bargaining unit plans are being negotiated and implemented, at the same time the employer has to develop, select and implement a pay equity plan for the nonbargaining unit employees. That is at approximately the two-year mark, and it depends on whether the unionized employees ended up going to arbitration for their pay equity plan. All their members would receive treatment with the first two per cent adjustments at about the two-year mark into the program.

Mr. Gillies: I am looking at the personnel list for your association that you put in the brief. It appears that librarians are about five to one female. That is what I am taking from the list.

Ms. Walsh: The total is 83 per cent.

Mr. Gillies: Your association includes 270 full-time and 54 part-time people.

Ms. Walsh: Yes.

Mr. Gillies: Part-time employees are one of our concerns in terms of the bill's coverage.

You say you have been trying since 1974 to have your classifications looked at again by the Civil Service Commission.

Ms. Walsh: Yes.

Mr. Gillies: Can you give us an idea of the current status of that? Have you made any headway? Have they given any indication of what they are going to do?

Ms. Walsh: We really have not. Sandra Louet is chairing the pay equity committee. In October 1984, the Ontario Government Libraries Council sent a copy of our brief to the president of the Ontario Public Service Employees Union and received a thank-you letter and were sent a thank-you letter by the chairman of the Civil Service Commission. After that, nothing happened, other than attempts that Sandra's committee has made this year.

Perhaps you would like to tell a little bit about what your committee has done this year, Sandra.

Ms. Louet: We tried working through the Ontario women's directorate, which contacted the head of the Civil Service Commission, to try to encourage some updating, but nothing was done. The last thing we did was to present a brief to the personnel council asking it to take some action on our behalf. We



thought they might have the ear of the Civil Service Commission, which we could not have. They responded that they could not get involved in that area.

We also sent a copy of the brief to the Civil Service Commission. They said they would not deal with groups involved; they could deal only with unions. We sent a copy of the brief to the president of OPSEU. At the end of 1985, we gave up trying to work through the Civil Service Commission. We had been trying since 1974. They would say they were attempting to do job audits and they were on the way to updating the class standings, but something always happened to stop the process.

Ms. Walsh: We were bounced back and forth from group to group.

Ms. Louet: We came full circle.

Mr. Gillies: So your feeling is that if change is going to be effected, it is going to be between OPSEU and the Civil Service Commission?

Ms. Walsh: Because we had a number of bargaining unit people, we thought that might be one approach of many to try. This year we have gone in a different direction and talked to the Women's Legal Education and Action Fund to get some suggestions from them. We met with their litigation director. This is our next step.

Ms. Louet: Their suggestion was that when the bill comes through, they may have something to say then but they could not suggest any direction we could take.

Mr. Gillies: Do you hear through the grapevine that this is a common problem? Do you think there are many other groups of employees within the public service that are concerned about antique job descriptions in the classification system, or do you think you are fighting a lonely battle?

Ms. Walsh: As far as I know, we are fighting a lonely battle. I am sure there are others.

Mr. Charlton: From their perspective, they are fighting a lonely battle. On the other hand, there are a number of lonely and isolated battles such as that going on in the civil service, not so much in the low-paid clerical and similar categories, but if you look at the civil service and all the different professions that are scattered through the civil service, most of those professions have some type of professional or semiprofessional organization, an association outside the bargaining unit. The relationship between the professional associations and their job descriptions and pay scales has been separated by the umbrella of the Ontario Public Service Employees Union and its legal relationship with the Civil Service Commission in terms of collective agreements.

I came out of a category that had similar problems in the early 1970s where our professional association of municipal assessors was, on the one hand, trying to represent certain aspects of an assessor's role as a government employee while the government at that time was dealing in the legal context with the Civil Service Association of Ontario, which was the predecessor to OPSEU. We ran into many of the same types of roadblocks and it was not until assessors, as professionals, got off their behinds and got involved in the composite locals of OPSEU and started feeding their concerns up through the collective bargaining process that any of them got resolved.

Ms. Walsh: I did hear recently that engineers in one ministry have been talking to engineers in other ministries who are concerned about their class standards as well. I just thought about that now. That was something I heard last week.

Mr. Gillies: Thank you. I wish you well. Whatever form Bill 105 takes, I truly hope it will help you in some regard.

Ms. Hart: I am not sure we addressed the concern expressed in your brief about the classifications, the job descriptions being the basis of the comparison carried out under Bill 105. It is my understanding that it would depend on the bargaining unit your members were in. In any bargaining unit, a comparison cannot be imposed by your employer. Dr. McAllister can explain it much better than I, but I was concerned that your concern had not been addressed. Is there something more you would like to know about that?

Ms. Walsh: We would like to know what procedure will be used to determine; whether the job descriptions will be used rather than the class standards.

Dr. McAllister: As Bill 105 is currently framed, it would make no difference how inaccurate your current job descriptions or classification standards were, because the bill would require that a fresh look be taken at your job content. They would be assessed on the basis of exactly what you do. In a sense, it would help to resolve the problem for pay equity purposes.

However, that assessment would not result in a new job description being necessarily written for your job through the pay equity process. It would not necessarily lead to an amendment of that job description, although your rate of pay would be changed. You might still have an outdated job description but an appropriate rate of pay.

Ms. Walsh: Or outdated class standards.

Dr. McAllister: Presumably, you could then work out your problems with your job description.

15:30

Ms. Walsh: I imagine the contents of the job would be looked at somewhat as the office administration--

Dr. McAllister: They would have to be looked at afresh, because an appropriate gender-neutral job evaluation or comparison system would have to be applied to your job for comparison purposes.

Ms. Hart: Before I yield the floor, I would like to say thank you. Sitting on the government side, it is nice to hear some positive words about Bill 105. I did not realize you are the only group so far that has had some positive words because I was not here last week. It is very nice to hear.

The Acting Chairman: Thank you for your presentation. It was a pleasure hearing your message. We now will adjourn for 10 minutes or until the next delegation arrives; then we can start again.

The committee recessed at 3:31 p.m.



15:54

The Acting Chairman: The last delegation today is the University of Toronto Staff Association. Welcome to the meeting. Perhaps you can identify yourselves and proceed with your presentation.

# UNIVERSITY OF TORONTO STAFF ASSOCIATION

Ms. Okada: My name is Nancy Okada. I am chairman of the personnel policy review committee for the University of Toronto Staff Association.

Mr. Askew: I am David Askew, the president.

Ms. Hawkes: My name is Elizabeth Hawkes. I chair the board of representatives of the staff association.

Mr. Meagher: I am Sean Meagher. I am a researcher for the university faculty.

Ms. Okada: This brief is presented on behalf of the University of Toronto Staff Association, a voluntary, noncertified employee association serving the 3,500 support staff personnel at the University of Toronto.

I would like to begin by saying how glad we are that equal pay for work of equal value is at last finding its way towards legislation. We feel that the introduction of pay equity is long past due. However, we are strongly opposed to the government's decision to exclude the broader public sector from pay equity. This exclusion is not justified by past practice in wage legislation.

In 1982 and 1983, the government found it only fitting that wage policies of Bill 179 and Bill 111 be shared uniformly by the public sector as a whole. The current government, then in opposition, saw no reason to oppose such a measure. Having shared the burden of wage restraints for the good of the provincial economy, we are now overlooked when the government introduces pay equity legislation. We feel this exclusion is a gross inequity.

It is important to stress that pay equity should not be allowed to deplete the operating budgets of the universities. Our university system has been ravaged by more than a decade of underfunding and cannot support further erosion of its budgets. Therefore, when pay equity is extended to cover the universities, the operating grants for the universities must be increased by an amount equal to the cost of pay equity.

We believe the definition of "bargaining agent" or "bargaining unit" should be broad enough to cover employee associations that engage in collective bargaining but are not certified under the Ontario Labour Relations Act. This was the case in the wage restraint bills.

While we are eager to see pay equity legislation extended to the broader public sector, there are serious flaws in the form pay equity takes in the current bill, and we would like to enumerate some of them.

1. The structure of the comparison process undermines the effectiveness of pay equity. To begin with, the definition identifying groups of jobs is too loose. There is no guarantee that the jobs grouped together for the purposes of compensation will be aptly or suitably grouped. York University, for example, has essentially clerical employees, the data entry staff, grouped

with its computer programmers for the purpose of compensation. Since the list of allowable complaints does not include the initial grouping of jobs, there is no recourse for this obvious inequity. Either a more strict regulation must be placed on what defines a group of jobs or groupings should be subject to complaint.

The use of a representative level, which is to typify each group, is not a viable plan. There is no such thing as a representative level, especially where wage inequity is in question. Where jobs falls behind the proper rate of compensation, they do not fall behind in a uniform manner. The process by which inequities emerged was not so carefully administered as to guarantee a uniform rate of inequity. Consequently, wage inequities are often uneven.

The claim that one can find a representative level that will indicate the percentage increase required by all levels within the group is difficult to justify. The claim that one can locate such a representative level simply by determining which is the most populous level seems even less reliable.

The fact of the matter is that pay equity cannot be achieved through shortcuts such as grouping jobs and comparing representative levels. It is absolutely essential to evaluate each and every job if one hopes to eliminate inequities among them with any kind of accuracy.

We do not support the decision to use the lowest-paid comparable male group as a target for pay adjustment. The representative woman should not be equal to the least of men. Equity means the average woman receives the same wages as the average man. Nothing less is just, equitable, fair or acceptable.

We are concerned that there are no maintenance factors present in this legislation. Any job evaluator, from Hay to the Canadian Union of Public Employees, will agree that a job evaluation system is worth while only if it is maintained. The continuing shifts in the specific skills and effort required by a given job must be monitored and proper compensation for those changes must be provided for those changes that occur.

A one-time wage hike, such as that described in Bill 105, overlooks the fact that the administration of fair wages, like any other kind of administration, is an ongoing process that must be continuously maintained. Given this, some requirement for ongoing wage adjustments, in accordance with the parameters set out in the job evaluation system established, must be included. Without such a measure, the wage structure will gradually revert to its original inequitable form in precisely the same fashion that inequity evolved initially.

We recognize the difficulty that the government faces in attempting to draft a pay equity bill. It is an awkward piece of legislation to administer. The selection of a suitable job evaluation system, correct selection of male- and female-predominated groups and proper compliance with the intent of the legislation are difficult to legislate in precise terms. However, we feel these represent relatively good reasons for making the legislation fairly heavily reliant on a safety net of complaint-based adjustments.

16:00

However, in many ways the bill undercuts its own safety net. The complaint deadlines are too short. It is detrimental to the effectiveness of the bill to place a 90-day deadline on complaints regarding the quality of the job evaluation system. The quality of a job evaluation system chosen is



vitaly important to the successful elimination of wage inequities. Despite this, there is a relative lack of specifications limiting the nature of the job evaluation system. Consequently, the complaint mechanism is an important safeguard and its success is crucial to the success of the legislation.

The best test for a job evaluation system is its application. Many of the shortcomings of a system will emerge only after the evaluation has begun. The 90-day limit precludes such a test and so eliminates the principal guarantee of effective and reliable job evaluation. Because of the need for ongoing maintenance of a job evaluation system, we disagree with the one-year limit for complaints regarding the application of the job evaluation system.

The bill is difficult to read and frequently unclear. Employees are less likely to lodge complaints if they are uncertain about the meaning of a given clause. It is vitaly important that the legislation be written more clearly and that all definitions and criteria be as thorough and precise as possible. As a typical example of this problem, the definitions of male-predominated and female-predominated job groups make no mention of historical trends.

Finally, the section dealing with complaints lacks a catch-all clause. At no point does the bill guarantee an employee's right to raise complaints regarding any unspecified activity that clearly undermines the intent of the legislation. The list of allowable complaints can easily be read as exclusive.

In short, the complaint mechanism is inadequate and the form that the bill currently takes is a further impediment to its success. It is imperative that the bill be rewritten and that the complaint component be expanded.

In closing, we wish to stress the urgency we feel regarding the implementation of Bill 105. Equal pay for work of equal value is long past due, not only in the public sector but also in Ontario as a whole. We at the University of Toronto who have suffered wage restraints when the province was anxious to save money are not content now to wait for pay equity.

The Acting Chairman: Any further submissions, or shall we open it to questions at this point?

Ms. Okada: I do not think there are any.

Ms. Gigantes: Maybe I could ask you for a little more detail about the members of your association at the University of Toronto. We had a presentation from York staff representatives--

Ms. Okada: On Tuesday.

Ms. Gigantes: They described the existing system in which there were three classifications: technical staff, computer staff and another, which was the largest group. How is your staff organized in terms of your collective process with the university?

Mr. Askew: How is--

Ms. Gigantes: How do you carry out your collective agreement process with the university?

Mr. Askew: The U of T staff association is not certified. There are around 3,500 staff who fit into our constituency, and about 1,700 of those have voluntarily joined the association. We enter into what the university calls discussions about salaries and benefits and we seek to reach agreement.

You mentioned the classification system. That does not generally enter into the negotiations, because we are talking about an increase that is applied equally to everyone, as an economic increase is applied. Last year it was three per cent. However, we have a classification system of the type where you have secretaries, clerks, computer operators, computer programmers, career counsellors, administrative assistant 1, 2, 3, 4--that sort of system.

Ms. Gigantes: There is no attempt by the employer to have one job evaluation system?

Ms. Okada: There is certainly an indication they are moving towards some kind of job evaluation system that will permit cross-comparisons with jobs. That is currently not in place; it is not the system we have now.

Mr. Askew: The current system allows for comparisons of relative levels of difficulty within the secretarial 1, 2, 3, and 4. It does not compare secretaries to computer operators.

Ms. Okada: It is not a point or rating system.

Mr. Askew: They are talking about implementing something.

Ms. Gigantes: How would you see it happening at the University of Toronto under ideal conditions?

Mr. Askew: How would we see the implementation of a new job evaluation system operating?

Ms. Gigantes: No. How would you see your association involved in the implementation of pay equity?

Mr. Meagher: We would be interested in being involved in much the same way that certified labour associations are involved: a clear guarantee of a right to consultation, a clear guarantee to arbitration if consultation does not produce an agreement.

Mr. Askew: We would like to negotiate the implementation of pay equity at the university, and if that involved the development and implementation of a different job evaluation system in order to permit comparisons of different types of jobs, then we would like to be involved in the negotiation of that.

Ms. Gigantes: You say a different job evaluation, but really, there is not one.

Mr. Askew: There is a job classification system so that everybody's job, my job, Nancy's job and so on, are all classified in a certain category, so there is a system, but it is not a system that allows comparisons between different types of work.

Ms. Gigantes: So the kind of wage increases that you have been experiencing over the last three years have been such that if there is discrimination against women doing women's work at the university, the gap that creates would have grown because you have had flat percentage increases.

Mr. Askew: Right. We do not have a firm estimate of what the gap might be, but two years ago we gathered some statistics. Out of the 1,350 staff for whom we had figures at that point, we found that three quarters of



the women made under \$25,000 and two thirds of the men made over \$25,000. We have known it all along, but the statistics show there is definitely a sizeable gap between the wages paid to men and the wages paid to women at the University of Toronto.

Ms. Gigantes: We have had a good deal of discussion here, and groups presenting to us brought forward that it is reasonable to expect that nonorganized, noncertified representations for employees were valid and could be effective.

Mr. Meagher: To begin with, it might be a good idea to make a very radical distinction between noncertified and nonorganized. We are quite organized; we are not certified. I would not want to speak generally for nonorganized labour groups, but the ones that are organized and not certified, and in universities it is very common to have organizations very much like ours, have easily as much right to consultation as any other labour association. We represent our workers adequately; we have the information and the means of determining whether the workers agree with a given position.

Mr. Askew: In the wage restraint legislation, I think the wording was that if there was a collective bargaining relationship, if there was a bargaining agent, it was not clear that it had to be a certified bargaining agent. There would definitely have to be an established process of collective bargaining; otherwise, how would you determine that there was any meaningful representation of the employees?

The Acting Chairman: Excuse me. We are going to have Suzanne Silk Klein make a comment on the discussion.

Ms. Klein: Obviously, this bill was not drafted in contemplation of your situation. That is a situation which may be fairly common in the broader public sector. An analogue of this bill--I would hate to speak with any greater precision than that--which looks to a definition of bargaining agent, would not make a distinction between an association such as yours, which does conclude agreements in the name of organized workers, and a certified labour union under the Labour Relations Act. Functionally speaking, you are the same.

16:10

Ms. Gigantes: Would that not be very much the same kind of situation as the one in which we see the librarians? Who gets where before us?

Ms. Klein: No, I think not, Ms. Gigantes, because some of those people are a professional organization organized around a narrow function. Some of them are represented by a union and some are not. This is a different situation.

Ms. Gigantes: The other question I had was about the 1,700 staff who are not members. Do you feel they would be happy to have you represent them in discussions with the employer on this matter?

Mr. Meagher: We represent the entire employee population of the university on a regular basis in salary discussions. To my knowledge, we do not receive any complaints about that.

Mr. Askew: We represent the entire group; only 1,700 of them choose to belong and pay dues. In some sense, it would be similar to a certified situation, where all employees are required to pay dues but they are not required to be members.

Ms. Gigantes: Thank you.

The Acting Chairman: Thank you for coming and sharing your views with us on this important matter.

Mr. Askew: Thank you for hearing us.

The Acting Chairman: Before the committee adjourns, I want to make a couple of comments. One is that it appears we have a full slate of presentations for next Tuesday and Wednesday; there is only time slot open next Wednesday. Thursday appears to be an open day. One item you should consider, perhaps to be decided next Tuesday, is whether you want to start a clause-by-clause review of the act then or leave it as a free day and wait until the Legislature reconvenes.

Ms. Gigantes: Is this the final day for requests to make presentations?

The Acting Chairman: No, tomorrow is.

Ms. Gigantes: Tomorrow.

The Acting Chairman: Yes.

Ms. Gigantes: That is what I thought.

Mr. Gillies: We all want to get this bill passed one way or another as quickly as possible. I do not think we can do clause by clause in one day. That happens with some bills, but I do not think it is going to happen with this one.

The Acting Chairman: It was only a start that I suggested, Mr. Gillies.

Mr. Gillies: I worry a bit about putting one day into it next Thursday, letting it sit for however long, then coming back and trying to marshal all our arguments again. Much as I would like to get it through quickly, I wonder whether we would not be better advised to schedule as much time as we can when the House resumes and try to do it in one big gulp.

The Acting Chairman: It is a good argument. I wonder whether we should decide this on Tuesday rather than today. It may be academic if we get sufficient bookings.

Ms. Gigantes: Am I right in assuming that the standing committee on administration of justice schedule that was set out last spring will be maintained this fall? There is nothing to change that.

Clerk of the Committee: I have not had any indication one way or the other from the House leaders yet.

Ms. Gigantes: So that would mean sittings on Monday and Tuesday.

Clerk of the Committee: I am assuming as much.

Ms. Gigantes: Okay. The other question I want to raise as something people might want to think about before Tuesday is that when we in this committee have dealt before with legislation that promised to be fairly



difficult in terms of clause-by-clause discussion and amendment, we have on occasion chosen to take what is called a dry run at the bill, go through it section by section and discuss our concerns around sections. That way we can try to come to an understanding of the points of view being expressed so that when we get to actual clause by clause, there is greater clarity in the committee as a whole about what is being addressed in a certain section.

It is something members might want to think about. We did that in family law and we have been doing it in Bill 34, if we ever get back to it. It does not take that long, but it seems to me a good investment of time.

Mr. Charlton: There is one other item we might think about in terms of next Thursday. I do not think we should make the decision today, but we can mull it over on the weekend. Although it has not been extensive, in the presentations we have received there have been some disputes around facts, for example, in the presentation earlier this morning. Perhaps we can spend some time next Thursday on coming to an understanding in the committee about what the facts are before we move into clause-by-clause discussion.

The Acting Chairman: Fine. One further thing. When we leave tonight, can everyone take his or her material?

Ms. Hart: Is this room about to disappear?

The Acting Chairman: No. It will be here.

Clerk of the Committee: The material might.

The committee adjourned at 4:16 p.m.





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Publications

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

TUESDAY, OCTOBER 7, 1986

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

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Offer, S. (Mississauga North L)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

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Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Gillies, P. A. (Brantford PC) for Ms. Fish

Ward, C. C. (Wentworth North L) for Mr. Offer

Wiseman, D. J. (Lanark PC) for Mr. O'Connor

Clerk: Mellor, L.

Staff:

Ward, B., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

Polsinelli, C., Parliamentary Assistant to the Minister of Labour  
(Yorkview L)

McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy  
Minister, Labour Policy and Programs

From MacLean, Chercover:

Elwell, C., Barrister and Solicitor

From the Coalition of Visible Minority Women:

Isaac, B., Executive Member

Das Gupta, T., Executive Member

From the Canadian Organization of Small Business Inc.:

Hale, G., Vice-President



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, October 7, 1986

The committee met at 10:19 a.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: Good morning, members of the committee. I would like to apologize for the delay to the presenters who are waiting to come before us, but we had to have representatives from each of the parties before I could officially get the committee started.

The first delegation for this morning is Christine Elwell, barrister and solicitor for MacLean, Chercover. This is exhibit 30 in your package, members of the committee. We welcome Christine to our committee meeting, and you may get started whenever you are ready.

MacLEAN, CHERCOVER

Ms. Elwell: Thank you very much. My brief is entitled "Bill 105: Challenge and Response." I am a lawyer with the firm of MacLean, Chercover. We specialize in labour law for employees.

What I intend to do today is to centre most of my remarks on a hypothetical challenge that I would bring in the Divisional Court, judicially reviewing a decision of the commission to give another angle or a different viewpoint on how this committee might want to think about the present wording of Bill 105. It will be limited to the procedural and substantive aspects in the present bill, without getting into the issue of how it would directly apply to the private sector. Therefore, considerations such as establishment or certain enforcement options will be less relevant. However, there is my brief of May 1986, where I do get into these other issues.

Assume for the purposes of the case that a female employee, whether represented by a bargaining agent or not, seeks to challenge a decision of the Pay Equity Commission and therefore some constitutional features of the present bill. The issues I would raise in the court would be the present formula of gender predominance, the representative job levels, the comparisons to the lowest male rate and the percentage of payroll used for pay adjustments.

The first question, of course, is an administrative one: How would one describe the Pay Equity Commission? By virtue of section 22 of the present bill, the commission is not protected by a very strongly worded privative clause, quite unlike the Ontario Labour Relations Board at sections 106 and 108 of the Labour Relations Act.

Thus, the applicant could apply for judicial review of the decision not only on a question of jurisdiction but also on any area of law on the face of the record. In other words, the findings of the commission would be much easier to challenge at the Divisional Court. The lack of any strongly worded

privative clause is mostly a result of the bill's failure to provide for an appeal to a tribunal of the decision of the commission.

As well, let us assume for the purposes of the case that the commission made its decision on the basis of written submissions without affording the applicant at present a hearing within the meaning of subsection 18(6) of the bill. It is respectfully submitted that the applicant would succeed in establishing that the decision of the commission is a statutory power of decision within the meaning of the statutory power of decisions act.

In any event, it is submitted that natural justice in the common law would support her challenge to the validity of the decision for its failure to provide her a full and fair hearing. In any event, the lack of a hearing would most likely taint the decision of the commission to such an extent as to raise the sympathies of the court in the applicant's favour for the substantive challenge that would follow.

The objective of the bill as described by the Honourable William Wrye is to "declare that the economic disadvantage endured by women because they are women is now to be ameliorated," yet the bill does not enshrine the human right of equal pay for work of equal value. Rather, it establishes a formula based on arbitrary criteria to lessen the wage gap for some but not for all persons doing "women's work." It is not universal in its approach.

Again assume for the facts of this case that the applicant is in a job category that is predominated by women by only 59 per cent and that the comparable male job is dominated by men by only 69 per cent. Given these facts and given the gender predominance test as specified in section 1 and subsection 5(3) of the bill, the applicant would not have been entitled to a pay equity adjustment.

It is submitted that the gender predominance test of 60 and 70 per cent is patently unequal and could be declared unconstitutional in the light of section 15 of the charter. Section 15 of the charter states that "every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination."

What is the rationale behind the 60 per cent female versus the 70 per cent male gender qualification? It has been stated that the different standard for gender predominance reflects the lower level of women in the work force. It has also been suggested that it is a means of identifying certain devalued jobs. Would either of these two reasons successfully defeat the constitutional right to equal treatment? It is submitted that it would not survive such a challenge.

Recently the Court of Appeal, in McDonald v the Queen (1985) 21 DLR (4th) 397, stated that the purpose of section 15 of the charter is to "require those who are similarly situated to be treated similarly."

One would think that if a condition of gender predominance is deemed necessary, then an equal percentage of gender occupation would have been sufficient. That is, would not it have been more equal that gender predominance be determined by 60 per cent for both male and female occupants? It is submitted that the ease of identification and the present lower participation of women in the work force are not of sufficient importance to override the constitutional right to equal treatment.

Would the different standard of gender predominance be saved by section 1 of the charter as a reasonable limit in a free and democratic society? Chief



Justice Dickson of the Supreme Court of Canada, in R v Oakes (1986) 26 DLR (4th) 200, recently described the criteria for section 1 inquiries.

The onus of proof is, of course, on the party intending to limit the constitutional right. The standard of proof is by a preponderance of probability which must be "applied rigorously." The evidence must be cogent, persuasive and make clear to the court the consequences of imposing or not imposing a constitutional limit. The court will also need to know what are the alternative measures for implementing the objective. The limit on a freedom must therefore be of sufficient importance and the means chosen must be proportional in the following sense:

1. The measure must be designed to achieve the objective in question and must not be arbitrary, unfair or based on irrational considerations.

2. If the means chosen are deemed rationally connected, they must nevertheless impair "as little as possible" the right or freedom in question.

3. The effects of the measures must be proportional to the objective which has been identified as sufficiently important. In other words, the more severe the effect, the more important the objective must be for it to survive a section 1 challenge.

It is submitted that the Attorney General would not be able to meet the heavy onus that the different standard of gender predominance is demonstrably justified in a free and democratic society. The administrative ease of identification is not of significant importance to override a constitutional right. The 10 per cent difference in gender predominance to reflect a lower level of women in the work force is arbitrary and not rationally connected to the objective of pay equity. Moreover, the arbitrary numerical cutoff has the effect of encouraging employers to hire, fire and transfer employees so as to limit pay equity adjustments.

What alternatives could the Attorney General point to for implementing a general predominance test? The commission is given only incidental powers in section 19 to consider other criteria such as historical trends. This is not withstanding the minister's acknowledgement that "there are many reasons to account for the difference in earnings" of men and women, "one factor in which is the historically lower value placed on jobs performed by women."

Nor does the bill provide that gender predominance may be a matter of negotiations between bargaining agents and employer, such as in the Manitoba Pay Equity Act. Nor does it provide a mechanism for a "special case," as has been advocated by both the Ontario Federation of Labour and the Equal Pay Coalition, to deal with a situation where there are no male comparable jobs or, as in the hypothetical case of the applicant, where she falls just short mathematically to qualify for equal pay for work of equal value. This arbitrary formula of gender predominance has the effect of reducing the number of jobs that can be considered for pay adjustments.

10:30

It is submitted that in its present form, the bill could be declared unconstitutional as a contravention of section 15 of the Charter of Rights. It is recommended that if a percentage is to be used in determining gender predominance, it ought to be the same percentage for both male and female jobs and that alternative measures be made available to identify discrimination within section 3 of the bill.

The second aspect of the bill's pay equity formula that is open to constitutional challenge is how pay equity is intended to be achieved as described in section 5 of the bill. The formula is based on a representative job level. It is submitted that this also contravenes section 15 of the charter.

The representative job level is that which has the most employees in it rather than the most female employees. This results in a selection of higher-paying female jobs which will compare more favourably with a given male level and will consequently result in a lower pay adjustment. The present scheme, based on job representative levels, does not represent the very group of economically disadvantaged women which the bill was intended to address.

In addition, it is submitted that where there are two female jobs which have the same proportion of women, the lowest-paying level that is equal to a male job will more adequately and fairly achieve pay equity.

The third substantive aspect of the bill which is open to challenge is that where there is more than one equal male job level, Bill 105 provides that the salaries of the entire group of female jobs be adjusted on the basis of a comparison to the lowest-paid comparable male jobs. Other jurisdictions use the highest comparable rate.

This unfortunate formula was adopted notwithstanding the analysis on pay adjustment on page 27 of the green paper, which clearly demonstrated that even using the average male rate, as opposed to the lowest, women paid the lowest wages within a job level are still not paid a rate equal to any male doing work of equal value.

By using the lowest male rate for the equal value calculation, both the lowest and the average female rate will not equal the male rate for a job of equal value. How could this result be considered equal treatment within the meaning of section 15 of the charter? What is the purpose behind using the lowest male rate to calculate equal value? It is submitted that the only reason is to lower pay adjustments. There is no rational connection between using the lowest male rate and the objective of achieving pay equity.

What alternatives were considered? The green paper's analysis considered the highest, average and lowest male rates. Of course, the highest male rate would achieve the most pay equity, but even when the drafters of the legislation were faced with the compromised value of the average male rate, when already admittedly this would not achieve pay equity, Bill 105 abandoned any compromise level and instead instituted the lowest male rate.

It is submitted that the lowest male rate is not demonstrably justified in a free and democratic society. In fact, the applicant could point to the evidence of the committee's own green paper, which found that equality at the present lowest male rate would not be achieved. Section 5 ought to be amended so that the salary of female employees is comparable to at least the average male employee.

The fourth and final regressive and irrational feature of the pay equity formula to be challenged is the percentage of payroll that employers are required to utilize for pay adjustment purposes. The present bill envisions that one per cent of the pay will be adopted based on the bargaining or compensation unit being adjusted.

As the Equal Pay Coalition has pointed out, this formula results in women who occupy and predominate the lowest-paying job levels having access to



the smallest pay equity fund. Indeed, the women or persons who need the adjustment the least, management and higher-paid women, will have proportionately the largest pay equity fund. It is submitted that such an approach also contravenes the quality of treatment enshrined in section 15 of the charter.

What is the purpose behind limiting the payroll adjustment to one per cent of the unit payroll? It is submitted that it is to reduce pay equity adjustments. How can this measure be deemed rationally connected to the objective of achieving pay equity, especially for those most disadvantaged? What alternative schemes were considered? The alternative would be a universal approach, much like that supported by this government with respect to health care.

It is submitted that adopting a percentage of the total establishment payroll where each bargaining or compensation unit is entitled to an equitable proportion of the fund will alleviate the regressive features of the present formula yet still maintain the intent of the bill to limit pay adjustments to one per cent of the employer's total payroll. Does the bill adopt such a scheme and thus impair as little as possible the right to equal treatment for those women paid the least? It does not, and it is submitted that such a scheme would not survive a section 1 inquiry.

For all these reasons or any of these reasons, it is submitted that the decision of the Pay Equity Commission could likely be overturned by way of judicial review. The present framework of the bill will undoubtedly tie up the courts even more than they are now and result in unreasonable delay in achieving pay equity. Employers will have a field day judicially reviewing every decision of that commission as it is currently constituted.

I am two thirds finished. The only thing I have left to read is the response, which will highlight some specific aspects of the bill that did not easily fit into the hypothetical challenge. I am at page 9 of my brief, if anyone is following the written submission.

The definition of the word "compensation" is commendable for achieving both payments and benefits; yet, as the green paper survey confirms, 20 per cent to 40 per cent of private sector compensation includes other compensation, such as allowances, bonuses, stock and discount plan options. The current definition seems to contemplate a more expansive definition of "other compensation" but only if it is of an ascertainable amount. It is submitted that the phrase "other compensation" be included after the phrase "payments and benefits" in section 1 for the purposes of clarity.

In addition, it would appear that subsection 3(2) is in need of amendment as it refers only to the word "pay" for the purposes of identifying discrimination rather than referring to the word "compensation," which more accurately reflects the intent of the definition of "compensation" and the purpose of the bill.

Finally, the bill provides that regulations be developed to further deal with expressions such as "compensation." It is hoped that the Lieutenant Governor will not see fit to allow discrimination in employer pension benefit contributions, which are determined on an actuarial basis, as the present Employment Standards Act, regulation 282, provides. It is submitted that such an exception to pay equity is not justifiable, and in any event, such a decision ought not to be left to regulations.

Respecting the definition of "employee," it is submitted that for the purposes of protecting against employer reprisal and to provide pay adjustments to employees who were employed by the employer after the effective date of the bill but who left the employ prior to pay adjustment for a period of employment in which the employee was employed, that the definition of "employee" be amended to include "a person who was an employee." This retroactive approach is consistent with the Employment Standards Act, subsection 1(1).

It is further submitted that the Employment Standards Act, subsection 38(1), be amended to be in conformity with pay equity legislation, so that when a woman returns from maternity leave, she will be entitled to any pay adjustment negotiated or ordered.

It is also submitted that the criterion of effort used to determine the value of work in section 4 of the bill not be left to be defined in regulations. The Saskatchewan Court of Queen's Bench in *Department of Labour v University of Regina*, in considering the Saskatchewan Human Rights Code, stated that the word "effort" "includes the measurement of the quality and quantity of physical and mental exertion normally needed for the performance of a job." It is submitted that such a definition more clearly describes the intent of the bill, without emphasizing improperly the physical aspects of the work.

10:40

Part II, Pay Equity General: It is indeed unfortunate that the bill provides for such a broad range of excluded persons to benefit from pay equity. Aside from the ripe constitutional challenge to the present scheme in section 8 of the bill, a number of patent difficulties must be addressed.

What does "rehabilitation position" mean? Is it limited to work done by the disabled, or is it extended to demotions? Why does the bill differentiate between casual and temporary labour so that casual labour for a duration of more than 16 weeks is caught by the legislation, yet no corresponding limit is placed on temporary employment? This is a fertile loophole which will no doubt be exploited by the employers.

Leaving the issue of temporary employment to regulations is not, it is submitted, responsible government. In any event, a 16-week grace period for casual help will afford an employer a clear opportunity to undermine the legislation. It is submitted that casual and temporary workers have the same interest in pay equity and the same community of interest as full-time workers. The Ontario Labour Relations Board practice when certifying bargaining units is such as to include both temporary and casual workers within the unit. The rationale for the exclusion has not been articulated. Thus, the purpose must be to facilitate the administration and reduction of pay adjustments. It is submitted that section 8 be amended to remove the exclusion of casual and temporary labour to forestall a likely challenge to the present exclusions from pay equity.

With respect to excluding those positions where there is a temporary labour shortage, reference is made to the Court of Appeal decision in *R. versus Howard* 1970. In interpreting section 33 of the Employment Standards Act dealing with equal pay for equal work, the court stated, "It is the work being performed by the male and female employees and not their terms of hiring which invoke the application of equal pay for equal work legislation." Surely this statement holds even more strongly with pay equity legislation. The present



scheme is another loophole which will seriously undermine the intent of the bill.

Section 9 clearly specifies that a reduction of compensation to achieve pay equity is prohibited. It is submitted that this section be amended to prohibit red-circling and freezing compensation in order to achieve pay equity. Under the Labour Relations Act, when a union is certified, the employer must freeze the working conditions until the parties negotiate a new collective agreement. It makes no sense to me that this same safeguard of freezing compensation be applied in this case.

Failure to prohibit this device of undermining pay equity will no doubt result in reprisals from co-employees against employees who seek pay equity. It is not enough to deal with this issue under the nonreprisal feature in amended clause 20(1)(a) of the bill. The root of the problem is the ability of the employer to freeze the wages of male jobs so that the wages of female jobs catch up. In addition, it is submitted that section 9 be amended to state that it is forbidden to contract out of the act and that it is forbidden to contract out work for the purposes of complying with pay equity.

In dealing with the time extensions pursuant to subsection 11(7) of the bill where employees are entitled to retroactive adjustments as if the extension had not been granted, it is submitted that in order to provide a clear disincentive for employer delay, the commission may order interest to be paid pursuant to section 138 of the Courts of Justice Act.

In part III, bargaining unit pay equity plans, it is recommended that section 13 and subsection 15(3) dealing with combined bargaining units be amended to provide that the union and the employer may negotiate and agree upon the appointment of an arbitrator. Only after a reasonable period of time may either party apply to the ministry for an appointment. This scheme has worked well under the Labour Relations Act. I am sorry to say there are many reactionary arbitrators on the minister's list of appointee arbitrators. It would be unfortunate if the early cases on pay equity should be decided by certain arbitrators in whom I am sure this committee would not have confidence. Therefore, I recommend that who the arbitrator is be a matter of negotiation.

In part VI, comprehensive pay equity plans, the present scheme only requires consultation with a bargaining unit in developing comprehensive plans. This flies in the face of the mandate given to unions under the Labour Relations Act to negotiate the terms and conditions of employment. The union must be able to compare and negotiate the content of the plan within its jurisdiction and in relation to other male jobs in other bargaining or compensation units within the totality of the employer's establishment.

In addition, employees must have access to information for all plans, including comprehensive plans. Thus, subsection 19(3) ought to be amended to state clearly that any particular pay equity plan includes a plan within the meaning of part VI.

In part VII, on the pay equity commission, the proposed nonreprisal provision in section 20a of Bill 105 is weakly worded. It is submitted that including the phrase "seek to" after the word "shall" will more adequately protect employees from employer reprisals. With this addition, it would not be necessary to prove that the employee was, in fact, intimidated, coerced or penalized. The mischief to be prohibited would include the attempt to commit these various offences.

Reliance is placed on the nonreprisal provision outlined in section 70 of the Labour Relations Act. Moreover, it is submitted that the phrase "seek to" be included in the proposed amended section 26 respecting the introduction of gender-biased compensation practices.

Finally, it is submitted that section 20a be amended to direct the commission to order that an approved plan be posted at the establishment along with a clear description of the complaint procedure.

In part VIII, the present complaint provision does not clearly provide a mechanism to complain that the employer has not filed a pay equity plan. Surely this complaint is fundamental to the purposes of the bill. The only remedy available for nonbargaining unit plans and comprehensive plans is to notify the commission. The use of the word "notify" does not clearly afford an employee the right to complain that the employer has not prepared nor established a pay equity plan.

Nowhere in section 25 is there a corresponding right to complain about employer inactivity and delay. Moreover, in declaring the duty to bargain in good faith with respect to bargaining unit plans outlined in subsection 25(4), the bill does not provide a corresponding remedy to enforce that duty.

Unlike the powers of the commission in subsection 20(4), as amended, where the commission may establish or amend a pay equity plan for nonbargaining units and comprehensive bargaining units, in dealing with bargaining units, the commission may indicate only its approval or nonapproval of a plan. Without the power to impose a pay equity plan after a reasonable period, pay equity could well become a strike or lockout issue and, let us face it, women's pay equity will not become a strike issue in the bargaining unit. It is submitted that the commission be given the power to impose a plan, in a similar way to the new power of the Ontario Labour Relations Board to impose a first contract.

My conclusion outlines what I believe to be the fundamental aspects of any affirmative action plan. The most important is that it is the equality of result that is important. Both the Ontario Divisional Court in Leisure World Nursing Homes and the Alberta Supreme Court in Gares have concluded it is not necessary to show that the employer had a discriminatory intent. It is the result that is prohibited. With that frame of mind, it leaves aside having to prove the intent of the employer. It is the results that are important. This is a much more objective approach and will probably be more helpful in the long run.

I thank you for the opportunity to make my submission; I have enjoyed it very much. If you have any questions or comments, I will be pleased to answer them.

Mr. Chairman: One member of the committee has indicated an interest in asking a question. However, I caution the committee that our time has nearly expired. We have about three minutes; so please keep the preamble to your questions brief. We will have to keep on schedule as much as possible.

Ms. Gigantes: We did not start on time; so I am sure you will allow us flexibility.

Mr. Chairman: I am allowing the half hour, even though we did not start on time. It is now 10:50. I took that into account with this presentation. Otherwise, it would have ended at 10:30.



Ms. Gigantes: I will figure that out later.

Mr. Chairman: From 10 to 10:30 is half an hour. It is a half an hour from 10:20 to 10:50.

Ms. Gigantes: I understood each witness had an hour this morning. I have made a mistake.

Mr. Chairman: Not individuals.

Ms. Gigantes: In your first paragraph on page 12, the middle sentence reads, "In addition, it is submitted that section 9 be amended to state that it is forbidden to contract out of the act and that it is forbidden to contract out work for the purposes of complying with pay equity." You would not contract out work to comply. You would contract out work to avoid compliance, would you not?

10:50

Ms. Elwell: To comply and to avoid are often the other sides of the same coin.

Ms. Gigantes: You have suggested that in section 22 we have a real problem in terms of an endless number of judicial reviews and you raised the image of employers going to judicial review every time there is a decision. Would it not be the case that one decision in judicial review would set a precedent that, one would hope, would tend to limit the number of reviews that commission decisions would go through?

Ms. Elwell: It has not been the practice with the Labour Relations Act.

Ms. Gigantes: Good, rather not good. I understand. When you question gender predominance, I understand the questions you are raising. Ultimately, I guess you are telling us that it would be better not to have percentage or jobs--

Ms. Elwell: If you are going to have a percentage, have the same percentage.

Ms. Gigantes: Is it not true that if we have a 60 per cent test for female predominance and a 70 per cent test for male predominance, the effect of this is to raise the pay equity adjustment because it is likely that a group that has a higher degree of male predominance is also going to have a higher wage rate?

Ms. Elwell: On the other hand, if there are only 69 per cent male occupants in a job, you cannot compare it.

Ms. Gigantes: Right. When you raise the question with us of why the lowest comparable male rate, surely another answer beyond the ones you have suggested to us is that nobody apparently wants to end up in a situation where, heaven forbid, some woman who had a job comparable to some man may end up earning more because she has been given the average male rate in a group, so that the lower end of the male group would get less than the woman doing a comparable job, which would be truly dreadful.

Ms. Elwell: I have trouble understanding the basic formula with the pay adjustments myself. All I did was go back to the green paper's analysis. It said, even using the average male rate, the lowest in the average females would not achieve pay equity.

Ms. Gigantes: That is correct.

Ms. Elwell: I figure if you use the lowest rate, that is even worse.

Ms. Gigantes: I understand, but you understand what I am saying.

Ms. Elwell: Yes.

Ms. Gigantes: That would create such a storm. If some man worked in one group that was one of three possible comparisons to a certain female-dominated work group and he happened to be in the lower paid of the three and the female work group was elevated to the average of the three, I can just imagine the charter case that would create.

Ms. Elwell: That only speaks to his underpayment.

Ms. Gigantes: Yes, it does.

Ms. Elwell: Why should women's work have to be lower because a man is being exploited? I do not know. It is not an answer.

Ms. Gigantes: I have very much enjoyed your submissions and I think we are going to have a look at them closely. How many times would you expect to see challenges by male employees?

Ms. Elwell: Oh, it is a fertile ground. Reliance will be placed on subsection 15(2). It will be interesting to see the type of challenge that will come of that. Some of the problems in the bill are patently unequal and they are based on policy decisions. If there is any room for compromise on those policy decisions to make it appear at least numerically equal, I think much of the bill could be saved. In its present form, it is going to be an open question. It probably will not be labour groups going before for judicial review; it will be the employers and it will probably be a consortium as they do on pension surplus cases. It is all in your hands.

Ms. Gigantes: Thank you.

Ms. Hart: I will be very brief. I, too, congratulate you on your brief. Can you help me a little with your background. It sounds as if you practise in the area of labour law.

Ms. Elwell: Labour law is my background.

Ms. Hart: Is your firm a labour firm?

Ms. Elwell: Labour law firm.

Ms. Hart: Are you union or typically nonunion?

Ms. Elwell: Union.

Ms. Hart: In your practice, have you had an opportunity to make many charter arguments? What is your experience with charter arguments?



Ms. Elwell: That is why I made the Oakes decision, for example, on section one. It is a very important decision.

Ms. Hart: I will be brief on this because I know we cannot dwell on it here. Have you a legal memorandum? Have you, for yourself or for your firm, gone through the analysis of the charter cases that exist in making your point about the validity of the challenge? I notice you have not given that to us. I wonder whether it is possible for us to have it if you have one.

Ms. Elwell: I would be most pleased to do some additional research for this committee, if you require it.

Ms. Hart: Okay, but it would be new research.

Ms. Elwell: It is new. Actually, there are a number of good equality cases that the Court of Appeal has. Regina versus McDonald deals with section 15. I have cited it in that case. There has not been a good section 15 case out of the Court of Appeal since, and it has not gone to the Supreme Court yet, so it is still early. But we are getting hints about where it is going. Regina versus McDonald says that people who are similarly situated be treated similarly, and that case has been quoted numerous times by lower decisions. It seems that this is where it is going, and that is a very broad view. I would definitely use it in challenging this legislation.

Ms. Hart: Thank you.

Mr. Chairman: Mr. Gillies has a brief question, I believe.

Mr. Gillies: I also took a lot from your brief and congratulate you on it. I fully subscribe to your position on the question of gender predominance, but I must say you raised an issue in there I had not thought about. There is an inherent unfairness in the 70 per cent and the 60 per cent, but when you raised the prospect of employers actually manipulating the percentages--

Ms. Elwell: Oh, they will.

Mr. Gillies: --to avoid the cutoff, frankly I had not thought of that.

Ms. Elwell: We see it all the time, and it is the same with the temporary-casual thing.

Mr. Gillies: In what context do you see it?

Ms. Elwell: We see it in terms of layoff provisions under collective agreements. If you say they are temporary workers, you can pay them at a lower rate and you do not have to lay them off by seniority. Every loophole you have in that bill will be exploited to the hilt.

Mr. Gillies: Actually, your argument with regard to the severance pay provision is a very good one. I have long said that this loophole should be closed.

That is the one point I had, and I thank you again.

Mr. Chairman: Thank you very much for your submission before the committee. You have made very interesting comments, and we will certainly take them into account in our deliberations.

Ms. Elwell: Thank you for the time; I appreciate it.

Mr. Polsinelli: Mr. Chairman, if I may at this point, I would like to table with the committee a response to certain questions that were raised by Ms. Gigantes at our public hearing of September 23, 1986. I believe each member of this committee has received a copy of the responses.

Mr. Chairman: Right. Thank you very much, Mr. Polsinelli. We appreciate getting the answers to those questions.

Again, with apologies for running a bit late, I will call Barbara Isaac and Tania Das Gupta, executive members of the Coalition of Visible Minority Women. As soon as you have settled in, we would ask you to get under way with your presentation before the committee. Welcome. Nice to have you here with us.

#### COALITION OF VISIBLE MINORITY WOMEN

Ms. Isaac: May I say before we start that our presentation is going to be very brief. Most of our work has been done with the Equal Pay Coalition. We are members of the Equal Pay Coalition, so a lot of what we say will be closely tied to what they have said. For visible minority women, however, we just want to shed some light on the positions we find ourselves most often in.

Our organization was formed in direct follow-up to the first provincial conference dealing with the concerns of racism and sexism in work, held in the fall of 1983, which was sponsored by the Ontario Human Rights Commission and the Ontario women's directorate.

We are more than 40 women from the Arab, black, Chinese, Filipino, Japanese, Korean, Laotian, native and South Asian communities. All of us belong to grass-roots organizations; all of us are committed to the struggle against racism and sexism.

A profile of the visible minority woman as a worker indicates that a majority of us are to be found in low-paid, nonunionized areas of service occupations, on short term or on contract without job security or in a variety of jobs with no clear-cut criteria for promotion. This occurs even when we are employed by the provincial government. Therefore, we feel it is imperative that the provincial government bring employment equity programs into force now. However, since we are discussing pay equity legislation, we would like to look at it in the light of the situations we find ourselves in.

11:00

We have a great deal at stake in this current debate on the issue of pay equity, particularly since we receive the lowest wages in the labour market. Furthermore, even more than mainstream women, immigrant and visible minority women are concentrated in female job ghettos that are traditionally undervalued and because of anti-immigrant and racist prejudice, immigrant and visible minority women have less hope of moving out of these job ghettos. It is, therefore, very important that their jobs be valued and paid fairly.

We believe that pay equity must be applied equally to both public and private sectors. Paying discriminatory wages should be illegal regardless of who your employer is. The legislation should protect all workers in Ontario equally.



Pay equity must be ongoing. There must be programs in place so that employers can continue to make the necessary salary adjustments. This means there must be ongoing monitoring by the Pay Equity Commission. Salaries must be repeatedly adjusted to reflect changes in the work place. For example, in a factory where new machines require employees to work harder or faster or to take on more responsibilities, there would probably need to be an appropriate salary increase. With a pay equity plan already in place, the procedure would be automatically reviewed.

We believe that pay equity should be retroactive to the July 1985 throne speech. The Ontario government made the commitment in July 1985 and we feel that pay equity should be retroactive to that date.

Pay equity should apply to all businesses no matter what their size and should also apply to as many "women's jobs" as possible. The idea behind the legislation should be to encourage employers to pay fair wages, not to provide exceptions and exclusions that enable the employers to circumvent the laws. Exempting small business from the legislation would be excluding a great majority of visible minority women, since they, like most women in Ontario, work in companies of 50 or fewer. "Women's work" should be broadly defined. Jobs in factories with cleaning crews or food service may not be strictly defined as "women's work" and yet visible minority women seem to be concentrated in some of the lowest-paid jobs in those fields.

I note in Bill 105 that casual and temporary positions are noted as exclusions. Visible minority women as well as immigrant women find themselves in those categories most often and those temporary jobs become temporary for ever. They are seconded from low-paying clerical jobs into beginning management jobs. If that type of a section is included, we may never find ourselves ever benefiting from pay equity.

Our recommendations include a definition of pay equity. We would like to see included in the legislation a strong statement of principles that explicitly recognizes the presence of women in female-dominated occupational groupings that have been and continue to be undervalued and underpaid in relation to male-dominated work of equal value.

The definition of establishment: We would like to see a corporate definition. We feel that this provides the broadest basis of comparison and a consistent approach to pay equity. There should be safeguards to ensure that employers who attempt to reorganize their corporate structure to avoid a corporate definition would still have to be covered. Any corporate definition should include at the very least "related employers" as that term is used in subsection 1(4) of the Labour Relations Act and subsection 12(1) of the Employment Standards Act.

Under those definitions "associated or related activities, businesses, trades or undertakings which are or were carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction" are treated as one employer.

Under this definition, we would include franchises. Most important, the definition would also be extended to cover subcontractors, in which many immigrant women find themselves as cleaners having their work subcontracted out. Even with the new provincial government, we find subcontractors being used particularly in cleaning companies.

Job protection: The legislation should specifically recognize job protection for an employee who makes a complaint. Bill 105 does that, but I think it should be a little stronger.

Unionized and nonunionized workers: Comparisons must be allowed between organized and unorganized workers, as 80 per cent of working women in Ontario do not have the protection of a union. Immigrant and visible minority women often find themselves in that situation, particularly in factory and garment industries where there are no unions.

Pay equity commission and tribunal: The Ontario Human Rights Commission and the employment standards branch are overburdened in their case load and have developed rigid structures and procedures that would not be compatible with the implementation of the Pay Equity Act. For example, with both the Ontario Human Rights Commission and the employment standards branch, the complainant does not have an automatic right to a hearing. We would like to see a pay equity commission set up to make an annual report to the Legislature through the relevant ministry. A pay equity tribunal should also be set up to deal with appeals.

The commission should have the power to impose a pay equity plan when an employer has not already set one up. It should also develop expertise and implement pay equity legislation. It should monitor employers and aid them with implementation. In this way, it can be the medium through which third parties will gain access to information about wages, job content and the wage structure of employers. It is very important that this pay equity commission be allowed to bring complaints to the third party.

It has been our experience that visible minority women cannot file complaints within 90 days. It takes them a while because of some of their language skills, their job positions or their status as employees to find information. Even if they do find the information, it will be difficult for them to bring the complaint to the right place. If a pay equity commission can do that for them, it would make the pay equity plan a little fairer for women in that position.

Tania Das Gupta will take the generalizations a little bit further and look at an example.

Ms. Das Gupta: So far we have talked in general terms. Now we would like to concretize the issues, relating them to real situations in visible minority women's work. As Barbara mentioned, within pay equity there are several items which, if narrowly defined, would exclude our sisters who suffer racism and sexism in the work place and who need this legislation the most.

Let us take the example of the clothing industry, which employs 75,000 people in Canada. Together with the textile industry, it is the third largest manufacturing employer and the largest employer of visible minority and immigrant women among the manufacturing industries.

The example is that of a clothing industry which employs fewer than 50 workers, of whom close to 30 per cent are female. In this company, women were segregated in the sense that they are restricted to a finisher's craft and the noncraft jobs. Men were the cutters, pressers and operators. The pressers, operators, finishers and lining makers were paid by piecework, that is, they were paid according to how much they produced. Each craft has its own separate price list, a list of prices designated for each piece of garment produced. The cutters, special machine operators and button sewers are paid by the week. Usually, they make the highest wages.



How would some of the debates on pay equity affect this company and the people working in this company?

Determination of value: How does one go about measuring equal value in this work place? The green paper suggests job evaluations. This can be one method, but it must be free of gender bias in evaluating skill, effort, responsibility and working conditions.

The legislation therefore must be flexible to include: (1) equalization of base entry rates--for example in the company we have quoted, finishers and button sewers were paid less per piece than operators who were mainly men--(2) elimination of increment steps before one gets the top money for the position; and (3) equal access to work. In this company again, men who were pressers and operators reported that their work was steady and in the busy season they worked overtime. However, women finishers did not get overtime work and experienced longer periods of unemployment during the slack season.

11:10

If we look at gender predominance, in the green paper it is stated that where an individual employee may initiate the complaint, comparisons will have to be made. To make this comparison, it is necessary to determine whether the job category of the lower-paid employee is predominantly female and whether the highly paid category is predominantly male.

The concept of gender predominance in the work place has its limitations. For example, in this company's two job categories, operators and finishers, if men accounted for 70 per cent of operators and women accounted for 60 per cent of the finishers, the employer could easily manipulate the figures by moving people around so there would be 67 per cent men in the position of operators and 58 per cent women in the position of finishers. I believe this point was also brought up in a previous submission. Gender predominance calls for designation of cutoff points in each category, which is arbitrary. We want all women covered by this legislation. Therefore, all employers must be covered by pay equity legislation which includes the concept of proportionate value.

Third is the issue of the model of implementation. Pay equity must be implemented by a combination of a proactive plan, as well as a complaint-based approach. We see a proactive plan consisting of an independent tribunal, which could observe that, after the operators sewed the pieces of the garment together by machine, the special machine operators would hem and baste it, tack on the facing, pink the edges and match the lining to the coat. All but the latter operation is done by machine.

Then the finishers receive the garment from the special machine operators to do the rest of the functions, such as finishing the button holes and so on. The finisher's craft involves hand sewing. The tribunal would be able to observe the tasks the different workers have to perform, and it could then decide that finishers should be paid the same time-work rate as that of special machine operators.

An independent tribunal, along with employer and workers, must initiate the proactive plan in an unorganized work place. In an organized work place, the proactive plan can be negotiated by the employer and the union. The majority of workers of visible minority and immigrant women work in unorganized work places. The fear of employer retaliation could reduce the number of complaints brought forward. Therefore, the complaint-based approach must include the right of third parties to bring forward complaints.

There are other items involved in the pay equity discussions. I think we have mentioned the definition of "establishment," which is an issue. Establishment can be defined in several ways. We favour the corporate definition with the inclusion of related employers--that is, under common control or direction--franchisers and subcontractors. For example, the cleaners who work at First Canadian Place should be included in the pay equity legislation when Olympia and York Developments Ltd., the owners of the building, put the cleaning contract up for tender. Pay equity must cover all women.

Another item closely linked to the definition of establishment is whether pay equity should apply to all employers or only those businesses with more than 100 employees. Since more than 40 per cent of women in Ontario work in establishments with fewer than 20 employees, we call for the legislation to include all employers.

Contract compliance must be one way of making the companies implement pay equity. Contract compliance means that any company which does any business with the provincial government must comply with equal value legislation and implement pay equity programs. We reiterate our point about having a pay equity commission and tribunal. These are the major points we want to make. We feel there has been a lot of discussion and consultation and we would like to see some kind of action at this point in the form of a law and its implementation. We want the government to take into consideration the points we have highlighted here. These are the concerns of the women we represent. Thank you. We will be happy to answer any questions.

Mr. Chairman: Thank you.

Ms. Gigantes: Thank you very much for your brief. I would like to ask a couple of questions about points you made, beginning at section 2 on page 6, gender predominance. The last paragraph underlines again, as you have so clearly in the brief, your concern to have coverage for all women in Ontario. Running on to page 7, you have suggested that what we should be looking at is legislation that not only provides equal pay for work of equal value but also proportionate pay, depending the value of the work and how it is assessed. Can you give us a couple of examples of what you have in mind? That is something I have not heard discussed before.

Ms. Isaac: If there is a group of women and either one man or very few men and they are in managerial positions, how do we equalize the pay? That is our concern, particularly in factories where there are large numbers of women and one or two men in managerial positions. We know women are being underpaid, particularly if we compare them to women in other companies. For purposes of understanding whether their pay is equal to their work, there are not enough men in the work place doing work that can be compared to theirs.

Ms. Gigantes: Again on page 7, under your section dealing with the model of implementation, you talked of an independent tribunal. I take it from the remarks you have made concerning the Ontario Human Rights Commission and the employment standards branch that, essentially, you are looking for the administration of equal pay to be given to an entirely independent administration. The bill we have before us suggests that arbitrators assigned to cases where there is disagreement between employers and employees about equity plans would be from the Ministry of Labour. Are you suggesting that arbitrators should be hired by the commission and deal only with questions of equal pay?



Ms. Isaac: I am not sure I would want to see them hired by the commission. I am not sure where I want to see them come from, outside or within the commission, but we have had the experience that the Ontario Human Rights Commission has been set up and still does not seem ever to come to a decision with which our communities can live.

Ms. Gigantes: Because of the length of the delay.

Ms. Isaac: Because of the way the commissions are set up, the places from which panel members are chosen. There are any number of reasons the Ontario Human Rights Commission does not work and does not satisfy the communities it is supposed to satisfy.

Ms. Gigantes: Yes.

Ms. Isaac: If we set up another commission to look at another disadvantaged sector, we should look at it very closely to make sure it does what it is supposed to do.

Ms. Gigantes: My last question is covered exactly by what you have addressed in your last response. Thank you very much.

Mr. Gillies: I also thank you for your brief. I was at the conference in 1983 that led to your group's establishment. I am glad you are still speaking out on these issues.

Part of your brief deals with the private sector. I think the committee members are well aware of the problems visible minority women face in any number of areas of the work force. Can you give us some specific examples of the problems and challenges your members face within the public service? Some of us on the committee will be moving to extend the legislation to the broad public service, municipalities, hospitals and so on. I am sure there are a lot of visible minority women who will then be captured by the legislation, who were not otherwise.

I guess there is a bit of an assumption on some people's part that government is an inherently fairer employer and that there is no discrimination within the public service and so on. Is that your experience?

11:20

Ms. Isaac: It is difficult for us to know exactly how the provincial government treats us as an employer. There are not many figures that single out visible minority women to tell us how well we are doing--we hope to get those figures shortly--but from our experience and from what we can see whenever we look around us, we are often in the lower-ranking jobs and the casual or temporary positions, even within the provincial government. We are often seconded to other positions or we remain in what is an entry-level position as a career. It is difficult for us to move up.

When we look at pay equity, we see that the highest-paying job in the women's category will be related to the lowest-paying job in the men's. We know we will never be in the highest women's category. In the example in the amendments I got, it looked at the women who were going to get 75 per cent of one per cent of the payroll. The lowest-paid woman was getting only 10 per cent. If we are always in the lowest-paying jobs for the most part, then we are always receiving the least amount of pay equity. Being in the casual and temporary jobs and the lowest-entry level jobs means that pay equity rarely reaches down to the positions we are in.

Mr. Gillies: You raise an excellent point, and it is one that has come up a couple of times in the committee. How do we ensure that this legislation benefits most the people who need it most? If we are seeing equity adjustments on a straight percentage basis, then the higher paid you are, the more benefit you will get from the legislation. Of course, the converse of that is also true.

Ms. Isaac: There has been some discussion about paying lump sums and beginning to pay percentages after that. I am not sure how that would work, but you see what happens when you talk in percentages. People with the lowest amount get the lowest amount. As long as we are talking percentages, that is what will have to happen.

Mr. Gillies: What about affirmative action within the public sector? Do you see much happening there? Has it helped visible minority people and women specifically, or are we still woefully lacking in that area?

Ms. Isaac: The coalition's position would be that employment equity became affirmative action, which became pay equity. Now that we have been discussing pay equity for years, employment equity has been swept under the rug. We now have pay equity, which is, in fact, only a part of affirmative action, and affirmative action is only a part of employment equity. When the provincial government talks about affirmative action, it is usually talking about women and it does not talk about the ethnic component to those women. Women may get ahead, but within that, we still see the ethnic woman not doing as well as she should because of the anti-immigrant and the racist prejudices we all have to deal with.

Affirmative action has not really looked at these minority women. However, the provincial government has started a study. It is targeting immigrant women in the study; so we will have some numbers. That is a good start. That is where we have to start and we will shortly be having those numbers, but as far as affirmative action itself goes, it has not benefited visible minority women. Employment equity is really what we have to see, where we tie in the minority and the women together. Because of this double bond, we are rarely targeted. When we look at it as a minority, it is a visible minority. When we look at it as women, it is women. We cross both and so we are often left out.

Mr. Gillies: Again, that point has come up before. What you are saying is that despite this legislation and despite what Mr. Scott may bring forward in terms of subsequent pay equity legislation, we must not allow the larger question of employment equity to be sidelined.

Ms. Isaac: Yes. We would really like to see the provincial government carry on with the study now and take the necessary steps to help visible minority women.

Mr. Chairman: Are there any further questions? There being no further questions, thank you very much for your submission.

We will now move on to Mr. Hale, whom we invite to come forward. Mr. Hale, representing the Canadian Organization of Small Business Inc., is no stranger to our committee deliberations. We welcome you again, Mr. Hale, to join with us in making your comments with respect to the legislation we are reviewing.

I should mention that Mr. Hale does not have a written submission. Apparently, your computer died, did it?



Mr. Hale: Yes, it died and it killed most of what was in it. The joys of technology.

Mr. Chairman: Do extend my sympathies to the family. Certainly, I wish everyone well. We will hear Mr. Hale's verbal submission.

#### CANADIAN ORGANIZATION OF SMALL BUSINESS INC.

Mr. Hale: The Canadian Organization of Small Business appreciates the opportunity to bring its views and concerns on Bill 105 before the standing committee on administration of justice. We have a number of very major concerns with this legislation, on behalf of our members in Ontario not only as employers but also as taxpayers and as those availing themselves as citizens of Ontario of the services provided by the province, its dependent agencies and other levels of government.

We believe this legislation in its present form is a Pandora's box which, if dealt with in isolation from other economic and social issues, could prove a major disaster for the efficient, cost-effective provision of services to the people of Ontario. This is not to say this legislation cannot be made to work; however, a number of major changes must be made if the impact is to be of net benefit to the people of Ontario, not only for those who are its intended beneficiaries, but also for all public servants and those who are accountable to the public for the management of taxpayers' money and government operations in this province.

Our concerns about this legislation fall into five areas: (1) the definition of what is meant by "pay equity"; (2) the management implications of this legislation and the way it is designed and applied; (3) its application to the municipal, education and health care sectors funded by provincial and municipal taxpayers; (4) the implications for cost allocation within the public service; and (5) the design and mandate of the Pay Equity Commission.

We recognize these are only a few of the many issues dealt with in the legislation and we recognize there are broader implications, especially for private sector employers and the employers I have the privilege of representing. Given that your time is limited, however, we will concentrate on these and welcome any questions you may have over and above that.

In regard to the definition of "pay equity," the notion of pay equity is based on the presumption that specialists acting in good faith can come up with a workable, serviceable and realistic definition of the value of a particular position based on four academic criteria--skill, effort, working conditions and responsibility. Those are four important factors in defining the value of any job, but they are certainly not the only factors. Moreover, they are subject to widely competing and conflicting interpretations. If not, we would not have need of a collective bargaining process to weigh, separate and balance those competing views of value.

We are deeply concerned that this academic, pseudoscientific approach excludes a number of market-related factors which are essential to the definition of value, even in the ivory towers of the Ontario public service. As taxpayers, employers and citizens, we believe the management of the Ontario public service and of other public sector employees does not exist in a vacuum, one public sector employer to another, or in relationship to the employment, salary and compensation patterns of the private sector.

For this reason, we believe that, at a very minimum, certain market-related factors such as replaceability, productivity and individual merit should be included in the criteria of value to be laid down as a mandate for compensation negotiations in the public sector and for the evaluation of any independent commission which should be set up to determine the application of these laws.

11:30

Why these three factors? Fundamentally, because the value of any activity or service depends on both technical and market factors. If certain skills are in surplus, whether in a particular job category or region, there will tend to be a lower wage value placed on those services. If such services are in comparative scarcity, as they are at many times in many places depending on the functioning of the educational system or the desirability of a particular community to people who might move there--witness the shortage of doctors in northern Ontario--then those skills which are in shortage will demand a higher price tag.

These gluts and shortages are not built into the fabric of our economy. They change. Our labour market is a highly flexible, highly dynamic thing. The services and skills that are in demand by the marketplace, by government and by other employers change from year to year. Many members of our organization are in very different businesses than they were five years ago because of shifts in the economy, even though their employees and the name on their front door may remain largely the same. Similarly, demands for certain types of government services change over time, though more slowly than the private sector. To design a basic law governing the compensation structure of government employees in this province without recognizing this fact would be shortsighted and irresponsible in the extreme.

The second factor, productivity, is never easy to measure precisely except in certain highly limited and defined positions. It is an important factor which encourages that the taxpayers of Ontario receive the greatest possible value for money. Certainly, the nature and definition of productivity will vary considerably, not just between the public and private sectors but also between various areas of the public sector. To pretend, as many public service professionals and managers do, that you cannot define or measure productivity in the same way as it is done in the private sector, should not mean that we do not attempt to define objectives and standards which should be met in the management of any government department or agency, and then attempt to reflect those objectives in the compensation system and the incentive structures built into the wages of people in those areas.

The third area relates in some degree to the second, and that has to do with individual merit. I have dealt with many fine public servants in this province in my time. One of the things I have noticed, in whatever context it may occur, is that many public servants feel trapped by the absence of any recognition or the limited recognition that is given to individual merit as a factor in compensation in various areas. By the nature of things, there are only so many opportunities for promotion available to individuals in certain areas or as a result of an overall attempt to limit growth of the public service. For that reason, the ability of public sector managers to recognize individual merit in compensation decisions, without going so far as to promote a climate of patronage and favouritism, is an important and an essential element in defining the basic criteria.

If these elements are taken only as secondary, then many public service managers will be required to go to extreme expense and complexity in order to



justify the inclusion of these factors in the basic criteria of value. Frankly, we think that would defeat the entire objective of a fair and efficient management of the public service. We think the taxpayers of Ontario deserve better.

To avoid a balanced definition, recognizing the importance of market factors, varying as it does between one department of government and another, would lead to excessive rigidity within the system, a lack of responsiveness to changing market factors and shifts in the labour force and the needs that governments often have to respond to very regional economic patterns which reflect different costs of living, the availability or shortage of various skill groups and other important factors. Therefore, if you do nothing more than to revise the definitions to make them more reflective of economic reality, this will be a major service to the public service and to the people of Ontario.

The second concern we have is in the area of management implications. We believe that the present system is virtually an open-ended invitation to log rolling between departments as the various bargaining units attempt to bid up the value of dissimilar jobs where a variety of different jobs, comparable jobs, may be valued at different levels. To take an apocryphal example, if a certain clerical position is being compared with a range of technical positions, the clerical position may have a value of 80 on the scale and the four technical positions have values of 80, 90, 100 and 110. There are four different technical areas which all have skill levels of 80 in whatever rating system comes up. The temptation will be to apply the equalization of value to the most highly paid technical area, which will then lead all other technical areas to demand a readjustment of their salary levels even though the terms of gender comparability may not apply.

In order to deal with this, it is essential that the legislation stipulate overall budgetary limits on the compensation for each public service agency. It is not enough to say that the cost of pay equity will be capped at one per cent or two per cent or three per cent of payroll, but rather that any pay equity settlement be reflected in an overall salary adjustment ceiling. Frankly, there is only one set of taxpayers in this province. It is not divisible among those taxpayers who pay for civil servants on an ordinary basis and those who pay simply for pay equity adjustments.

We have only one pocketbook, and to the extent that the provincial government in its wisdom believes that the existing system of compensation is unfair to certain groups of employees, it should be prepared to allocate the costs of meeting that correction, if indeed it is needed in certain areas, against the entire compensation budget of the public service and not against some increment to be extracted over and above all other existing costs. Otherwise, we will have a situation in which the overall budgetary accountability of the province is shot to pieces and, frankly, our management position is beginning to compare unfavourably with other provinces, particularly Quebec and neighbouring states.

It is always a good rule of thumb that if the government is going to increase expenditures, it should do so by spending better what is already taken in from the taxpayers as opposed to making greater and greater demands on them in an already high tax environment.

A third area of concern in the management implications is the application of the proposed model of pay equity to small units. The requirement that there be a certain percentage of employees covered in a

particular area or that statistically valid measurements and comparisons are possible at all becomes extremely problematical in units with fewer than 30 employees. The statistical validity of such models is open to serious question and it introduces a level of ad hocery--and some would even call it quackery--into the determination of value that would call into serious question the credibility of any evaluation system applied to small units. Should this model be imposed, this would apply not only in the Ontario public service, but also to a much greater degree, to the municipal, educational and health care sectors of the province's economy.

11:40

There are many small municipalities that are very much like small businesses inasmuch as they do not have a formalized personnel process; nor in the many small towns, rural municipalities and county governments, has such a highly technical system ever been necessary. To impose this kind of system on the Eramosa townships, the Nipissing counties or on some small, rural municipality in Lambton county would be a disservice not only to taxpayers, but also to the sense of fairness and equity that employees in those areas have, simply because it would require a major disruption in the human and management relations and would cost a lot of money to design systems and bureaucratic compliance mechanisms.

That money would be much better spent in either improving wage levels where it was considered necessary or improving services to the people of the area. For that reason, we strongly deprecate any extension of the legislation to the municipal sector as a whole and to small units within the municipal, educational and health care sectors in particular.

Applying Bill 105 to other levels of government raises the question of the provincial government demanding that these levels of government accept certain responsibilities without providing them the means to meet the responsibilities. In speaking to various people in the municipal sector, we have found there are a number of previous cases, not least among them Bill 82, in which a mandated right for consumers of certain area services had been imposed on municipalities and school boards and that, in effect, the province said, "Raise your taxes, because we are not going to provide you with the additional resources necessary to meet these requirements."

It has resulted in a reallocation of taxpayers' money from one area of municipal or educational responsibility previously judged more important by the people who were elected by the voters of an area to set priorities and make decisions and the reduction of their autonomy and ability to serve the people of their area. To the extent that we impose responsibilities upon more junior levels of government and other agencies of the provincial crown without providing them the means of providing the services, we create a climate in which either taxpayers will be systematically raped to make up for the excessive demands on local agencies or other areas previously judged more important by those elected to make such decisions will have to suffer considerably.

The management of municipal educational services is an area of substantial debate right now. Funding levels are an issue of substantial controversy, although for once I agree with the Minister of Health (Mr. Elston) when he says the issue is not how much money is spent on health care in this province, but rather how well it is spent. The same applies to the application of this legislation to the municipal sector.



Finally, I would like to address the issue of the Pay Equity Commission. We are intensely sceptical about the capacity of any commission to have the wisdom or to make the independent value judgements necessary to establish, revise and update compensation scales in the context of our overall economic, fiscal and social environment.

First, we believe it is essential that, should such a commission be set up, it does not become the captive of a small professional clique attempting to impose its dominance and its expertise on the people who are responsible not to civil servants, but to the entire people of Ontario. The representation that should be on a commission and its mandate are extremely important to that end. We believe it is important that there be taxpayer representation on any pay equity commission, so the interests of taxpayers can be protected.

It would be nice to think that the elected officials of this province were here to protect the interests of taxpayers. The idea of an independent commission is that it be independent of the people's representatives, so that you cannot interfere with them. Therefore, with respect to the operation of this commission, even if we were to give you the credit for standing up for taxpayers' interests, as I believe most of you attempt to do, you are systematically excluded from carrying out that responsibility. We believe, therefore, some element of taxpayers' representation should be present.

Second, we believe the application of provincial government standards, downtown Toronto standards, to the rest of this province is a factor. The standards of other areas of the province must be represented in the work of the commission, not only in applying the narrow technicalities of the law, but also in finding a commonsense happy medium that reflects all interests--not just the interests of plaintiffs; not just the interests of unions; not just the interests of business, but all elements of our society.

Third, we would like to see a degree of business and, indeed, small business representation on such a commission, because any legislation applied at the provincial level, particularly in the smaller centres of this province, has a direct impact on the character of employment in other areas. While your intentions as legislators may be good, you will not be around to oversee the detailed implementation of these laws. Most of you have been around long enough to know that while you may pass a law with the best intentions in the world, it is frequently beyond your power to translate those intentions into reality, once the minutiae of regulations, of commission procedures and so on, develop a series of precedents.

In terms of its function, we are deeply concerned that the commission develop a life of its own, not related to the considerations of employment that are present out there and the other economic considerations. We already have in the Ontario Labour Relations Board an agency that is systematically hostile to and frequently ignorant of the operations of smaller businesses and smaller operations. It attempts to impose a uniform big business standard on all the employers of the province. This is something we think should be avoided and, to the extent that an outside agency is necessary to process complaints, to screen them and to determine whether they have merit, we believe the employment standards branch of the province would be a reasonable place to put that responsibility.

Fourth, the arbitration process should be tripartite. We should not have a situation whereby one arbitrator, unknown to either party, but probably reflecting the inherent and accumulated biases of a professional commission

staff, should have the right to determine and impose his or her views and biases on a particular agency or, perhaps at some future point, on another level of government. We would like to see a tripartite approach wherein a management appointee, a plaintiff's appointee and a neutral, mutually acceptable chairman are responsible collectively for interpreting and applying this legislation.

11:50

Finally, there is the matter of the cost of dealing with the whole bureaucratic process. We recognize that in any matter in which the Ontario government is involved, having the crown pay for the crown is not a major concern. We also recognize that the Ontario Public Service Employees Union and other public sector unions are fully capable and the huge amounts of union dues they raise from members are looking after their members' interests.

However, to the extent that you apply this legislation to smaller units, we strongly recommend against it. To provide for the representation of taxpayers and the fair arbitration of disputes, we believe it is incumbent upon you that the costs of smaller defendants be met, particularly should there be a reasonable degree of doubt about the validity of the complaint. Otherwise, the system would become a kangaroo court in which smaller entities, particularly in the municipal and educational sector, would be subject to the combined weight of provincial unions and the entire government bureaucracy.

Right now, they have a hard enough time dealing with agencies, such as the Workers' Compensation Board. They have a hard time dealing with the long delays and costly processes in dealing with the provincial government. Some provision should be made. Should you proceed with the unwise act of applying this bill beyond its originally intended mandate, then we believe it is incumbent on you to provide the resources for those people not only to meet their responsibilities but also to define what those responsibilities really are in a fair and balanced proceeding.

Mr. Chairman, I could go on substantially longer, but I welcome the opportunity to take any questions that you or any other members of the committee might have.

Mr. Chairman: Are there any questions?

Mr. Gillies: I appreciate your presentation, Geoffrey. As usual, you really did not need a written brief. You can articulate well the points you want to make. I made a couple of notes. I want to say at the outset that I have no problem at all with the points you made about business representation on the Pay Equity Commission. In fact, I hope that business and labour will be represented on the commission, as I would not want to see that commission made up just of government officials or academics. I think that is a very good point.

Mr. Hale: I appreciate that.

Mr. Gillies: Dr. McAllister, I do not know whether you had any thoughts on that.

Dr. McAllister: They are.



Mr. Hale: I hope there would be a variety of business representation because, just as there is diversity in business, certainly the average big business person is totally incompetent to reflect on anything that might reflect on small business and vice versa, to be fair.

There is also a diversity in union representation. One can see that by the growing gap in approaches to the marketplace of public sector and private sector unions. We believe there should be a variety of representation, and that there should not be an attempt to impose ideological uniformity on representative groups. The diversity of the labour movement is such that it should be reflected in any appointments to the commission. Probably, there should be a predominant private sector bias, if you will, to labour appointments.

We hope there would also be a very substantial diversity of employer representation, so that it is not just the same old crew of professionals who have been designing or misdesigning compensation packages for years or who have the ability to pass on open-ended settlements to their own customers.

If you have a regulated monopoly such as Bell Canada or a highly protected situation such as many big trucking companies, it is very easy to say: "We can just pass that on to consumers. We have a protected marketplace, so we can go in for all this stuff." However, that changes a lot if you are a smaller operation, perhaps operating in a smaller centre, in which a decision could be highly disruptive to the local economy. It is not so much an individual decision as it is a continuing process of decisions.

Mr. Gillies: In terms of the strength of the commission, the point of making sure that it is representative of any number of different sectors is very well taken. Certainly, small business has to be included in that.

I listened to your argument on the question of bringing this legislation into effect over what we have called the broader public sector. You used the terminology "imposing responsibility" on these other levels of government or sectors in the economy. My problem is, what was your feeling at the time of the restraint program when it was the other side of the coin? The province was saying to the municipalities, hospitals and so on, "We want to cap spending and we want you to be part of that process." In effect, the province told those various sectors that they had to limit their pay increases. I supported that at the time. Now that it appears the province is going to extend a benefit to its employees, similarly I support the concept that this should be extended to those same people. I would like to hear your thoughts on that.

Mr. Hale: Certainly. Frankly, we go on the basis that the government does not own one cent of its own money, that it all comes from taxpayers. Therefore, anything that limits the overall costs of government or makes government more efficient and better managed, we will support. Anything that promotes its expansion relative to the overall size of the economy or increases in taxes relative to our incomes, we will oppose.

Obviously, there are equitable and fair ways of imposing restraint or a reallocation of resources within provincial and municipal governments. If you are imposing restraint on municipal spending through restraint on transfers to municipalities at the same time as you were imposing more and more demands on those municipalities, you would be talking out of both sides of your mouth.

Frankly, we think our position is entirely consistent. It is based not on the idea that the state is entitled to an ever-expanding share of the income of the productive sector, of the working taxpayers of this province, but rather that the state should live within its means and to the extent that it attempts to expand the services available to the general public, the overall cost should be less than the ongoing growth of the economy. That is a well-established principle.

We do not think it has to be applied in a way that makes public sector unions and individual public servants scream with agony. That is a function of good management. To the extent that management hides behind restraint and does not get its own act in gear, management is wrong. We have said that. We said it to the provincial Conservatives when they were doing it. We said it to the federal Liberals when they were doing it. We have said it to the New Democrats in other provinces in which they have formed the government. We are being entirely consistent.

Mr. Gillies: On the question of extension, we will have to agree to disagree. I want to pick up on the cost implications and the point you made that if this is going to be in effect over agencies, municipalities and so on that are financed in large part by the province, but also by the municipal tax base, the province has to assume its fair share of that burden. How do you see that happening?

In the case of extension, do you think the province should assume all the costs of pay equity in these other sectors or a proportionate part of the cost based on the proportion of the budgets that are met by the province, or how do you see it? I think we all share your wish to minimize the effects of this on the property tax rolls, but I wonder whether you have any thoughts about how we get there.

Mr. Hale: The first priority has to be to set an overall financial framework within which we are going to deal not just with pay equity but also with the entire range of provincial spending and the entire range of transfers to municipalities, school boards and health care institutions. It is no good to take the salami-slicer approach that says, "We will give you two per cent here, two per cent there, two per cent somewhere else and five per cent somewhere else," because you will end up with 11 per cent. The province will end up paying for the whole thing, and it will not be offset against greater economies, improved efficiency and better management of services. If we operate in a very narrow framework, this entire exercise will become self-defeating.

Finding an appropriate balance so that the increased costs here are found in greater efficiencies somewhere else is an extremely difficult exercise. We think the province should accept at least proportional responsibility, but it must be done in the context of all transfers so that we do not end up robbing Peter to pay Paul, or in this case, Pauline.

12:00

Mr. Gillies: To try to synopsise fairly and recognizing that you do not think we should be doing the extension anyway, if we do it, you are saying that if agency X is funded 80 per cent by the province and 20 per cent by the municipal tax rolls, at least 80 per cent of the additional cost should be borne by the province.

Mr. Hale: That is correct. It should probably be offset by other management measures, whether in terms of continued staff reduction through restraint or attrition, increased contracting out or commercialization of



services or any of the other dozens of practical management methods that would allow for a better allocation of resources within those areas.

Mr. Gillies: In discussing your second point about the management problems, you talked about the difficulty of bringing this or any pay equity model to bear on small units. You mentioned units of fewer than 30 employees. I take it from my notes that you raised a question about the statistical validity of imposing such a model. As someone with high school math, and I am not proud of that, I wonder whether you can explain the problem you see here.

Mr. Hale: You are familiar with polling, Mr. Gillies.

Mr. Gillies: I have seen the odd one. I have not seen any I liked lately.

Mr. Hale: That is not my problem. If you take a sample of 300 voters, you can break it into five or six areas and still get numbers that mean something, plus or minus three per cent, four per cent or five per cent. If you take those five areas of your constituency and try to subdivide so that you get a perspective of the political opinions of single mothers in townhouses, you could not get any statistically valid percentage because you would probably be breaking down into a group of 10, 20, 30 or even 40 in which the error factor would probably be substantially greater than what you could make a decision on.

The same thing applies to this kind of evaluation. There are sufficient factors involved in defining worth that any highly technical system needs to have a fairly large number of people and there are varying opinions. I know there are opinions that say you can do it in a unit with 10 people. Those are the same people who have been charging millions of dollars to large corporations to screw up their compensation systems for years. There are other people who say you need 100 people. I do not know what the happy medium is to get a statistically valid definition of value that is not going to get more people ticked off at you and demotivate more people than it helps.

My caution is that because you have said a female-dominated group has 60 per cent women and a male-dominated group has 70 per cent men, that adds another factor that is going to make the basic problem, which would apply if you did not have the 60 per cent and the 70 per cent, that much more difficult in coming up with a statistically valid situation that is not comparing apples and wing nuts.

Mr. Gillies: You perceive that part of the problem could be eliminated by doing away with the gender predominance feature, the 60 per cent and 70 per cent and so on.

Mr. Hale: That would create a whole other range of problems, and it would create debate over whether we should get into proportionality and how much a member of the Legislature should be paid relative to a cabinet minister. I do not know. If you want to deal with that one--

Mr. Polsinelli: We should be able to compare ourselves with cabinet members and do it in that way.

Mr. Hale: Yes; although one could argue that private members of a minority government tend to have a greater level of influence over the conduct of affairs than private members in a majority government. Again, a number of factors come into it.

Mr. Polsinelli: We should have conflict-of-interest laws governing them also.

Mr. Hale: I will not touch that one with a 10-foot pole.

Mr. Chairman: Let us not get into that.

Mr. Gillies: I do not want to get into a discussion of whether we should be paid the same as federal members, except to say I think we should be.

Mr. Chairman: You say that without any equivocation whatever.

Mr. Gillies: With one minor caveat.

Mr. Chairman: Are there any further questions? Mr. Polsinelli had a question. Have you withdrawn it?

Mr. Polsinelli: Mr. Hale has sufficiently responded to it through Mr. Gillies's cross-examination on his presentation.

Mr. Partington: I would like to say I appreciate your point of view that at the same time as we must address the principle of eliminating sex discrimination or pay on that basis in the work place, we must also bear in mind the taxpayers of the province and make sure we maintain a balance between the public share of our global income in the province and that in the private sector. I appreciate those comments.

Mr. Hale: Thank you. There is one other item I would like to touch on that has not come up. It concerns the other factors that contribute to the wage gap. While employer practices may play a greater or a lesser role, I would argue that deliberate employer practices play a much lesser role. There are also such factors as education, training and the availability of appropriate child care services, for example, which play an enormous role. To the extent that the province imposes a highly costly, highly bureaucratic and inefficient structure, it reduces the resources available to improve the quality of career education in the schools. It reduces the resources available in a finite world to apply to skills training and to assist those parents in greatest need to obtain quality child care services that meet the needs of the family.

To the extent that these factors, taken together, account for a far greater proportion of the wage gap than real or perceived discrimination, we urge that in any debate over how much money and what level of resources and management time are to be allocated to these issues, we have to balance them against the other factors, which to some degree this government has begun to address.

We give it credit for addressing those issues in the areas where it has begun to address them, but to the extent that your deliberations will be considered unnecessary in 10 years, it will be less what you are doing in Bill 105 than the success you have in dealing with those other factors which contribute to the inequalities of economic opportunity and the choices that individuals have to pursue particular careers or lifestyles.

Mr. Chairman: Thank you. I have one quick question. Do you accept the belief that there are inequities between the levels of pay received by females and males in our society?

Mr. Hale: I would say that to make that a sweeping generalization is to do a disservice to anyone who has ever been involved in the personnel business. However, there is no question that in certain areas, certain



positions may be considered to be overvalued or undervalued compared to certain other positions. In many cases, many positions that are overvalued are filled by men and those that are undervalued by women.

One of the things I hear on a fairly frequent basis in talking to my members is that if those civil servants who are overpaid had their pay reduced to help those who are considered underpaid, they would have a lot less difficulty in dealing with this legislation. It would be naïve to say that examples do not exist. To say there is massive and deliberate discrimination that is the primary responsibility of employers would be a statement in defiance of every independent statistical study that has ever been done. To the extent that the law is designed to correct anomalies, it has some value to the public service and the people of Ontario. To the extent that it is designed to impose an ideological model that is out of touch with reality, it will be a disservice to everyone associated with the government of Ontario.

Mr. Chairman: If I understand you, you may have said that there are some areas of discriminatory practices related to the female pay levels. If you said by way of acknowledgment that in fact there may well be some small segment of discrimination with respect to those pay levels, I wonder if you could suggest any mechanism or government response that might overcome that disparity, other than what we had before.

In other words, have you thought through a system, a method, if you will, by which government could fix up a problem that is being perceived by perhaps the majority, depending on the poll one might read on a given day? Certainly, there is a public perception that there are some problems out there. We heard earlier this morning from ethnic groups and visible minorities who are an additional class within a class of workers whom many people perceive as being underpaid in certain job categories. Is there a solution?

Mr. Hale: There are any number of solutions, none of which is perfect, none of which by itself will correct the entire problem, but some of which may have the ability to correct part of the problem if they are dealt with in a sound overall management context.

It is quite reasonable to say that the government of Ontario should be more open to the hiring of women and visible minorities, particularly in management positions. However, to say it has to establish a quota system is to place in serious jeopardy the merit principle which, frankly, would be a greater insult to the people being hired, particularly for responsible positions, than the existing system, imperfect as it is.

The answer is that there are no panaceas out there, no easy solutions. Nothing will provide you with benefits without some cost. As elected officials, you must recognize that the good you do may die with you but the damage you do will be incredibly difficult to undo.

Mr. Chairman: Anything further? Thank you again, Mr. Hale. You have added another dimension to the discussions we are having in this committee. We appreciate the time and the effort and certainly the study you have put into the subject. There may be some modest disagreement with some of the points you have raised.

Mr. Hale: If there were not, there would be no reason to come here.

Mr. Chairman: We do appreciate your time and the fact that you have added some views that we have to take into account.

The committee recessed at 12:13 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

TUESDAY, OCTOBER 7, 1986

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Charlton, B. A. (Hamilton Mountain NDP)

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Offer, S. (Mississauga North L)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Smith, D. W. (Lambton L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Gillies, P. A. (Brantford PC) for Ms. Fish

Mitchell, R. C. (Carleton PC) for Mr. Villeneuve

Wiseman, D. J. (Lanark PC) for Mr. O'Connor

Clerk: Mellor, L.

Staff:

Ward, B., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

Polsinelli, C., Parliamentary Assistant to the Minister of Labour  
(Yorkview L)

McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy  
Minister, Labour Policy and Programs

Klein, S. S., Policy Adviser, Policy Branch, Labour Policy and Programs

From the Ontario Secondary School Teachers' Federation:

Baumann, R., Vice-President

Richardson, L. M., General Secretary

Individual Presentation:

Hoggart, P.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, October 7, 1986

The committee resumed at 3:10 p.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: Members of the committee, we are running a touch late.

The first delegation we have this afternoon, as a result of the earlier cancellation, is the Ontario Secondary School Teachers' Federation. We have Ruth Baumann, who is the vice-president, and Susan Borowski, who is the assistant secretary and who, I believe, will be making the presentation.

Ms. Baumann: Morris Richardson.

Mr. Chairman: Obviously, there has been a change here. Perhaps you could identify, sir, what the change might be.

Mr. Richardson: I am Morris Richardson. I am the general secretary of OSSTF.

Mr. Chairman: We are pleased to have you here substituting on behalf of Susan. Welcome to our committee deliberations. Whenever you are settled in there, you can get started.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

Ms. Baumann: It is a pleasure for us to be here this afternoon representing the secondary school teachers of the province. We will try not to take too much of your time with the text of our brief. We are members of the Equal Pay Coalition and have endorsed its position. You will find that many of the positions we have taken are ones that I am sure you have heard from a number of organizations.

We represent 35,000 secondary school teachers in this province in 79 bargaining units. Roughly 37 per cent of our membership is female. We have had continuing concerns within our own profession about the status of women within that profession and have worked fairly actively within teaching to examine the avenues available to women for promotion and to look, in some cases, at the subject ghettoization by sex that occurs, at the issue of sex equity in the curriculum and so on. We have been participants in the Equal Pay Coalition for the last couple of years, and our appearance before you today is really the fruit of all of that involvement.

Our concerns about Bill 105 are focused on five areas: the identification of gender predominance groups; the scope of the legislation and the exceptions to it; the mechanisms for pay adjustment; the rights of unions to negotiate all aspects of pay equity and equal value adjustments and the

rights of workers who are not unionized to initiate complaints; and the enforcement and appeal procedures.

If I may begin with gender predominance groups and their identification on page 2, we have concerns that the definitions as they exist in the legislation are very narrow and that there may well be, for example, some job classifications that have been traditionally and historically seen as women's work, but because of changing circumstances now have a larger number of men but still may be low-paid jobs that might not meet the 60 per cent criterion. Those job classifications should have access to equal pay legislation.

We are concerned as well with the definition of the gender predominance groups that unless there is a male group for comparison, there is no comparison. We would support the recommendations made by the Equal Pay Coalition and a number of other organizations that the legislation should provide for evaluation based on job content. I believe we hit that specifically later.

In terms of the scope of the legislation, our greatest concern is that it is addressed only to the public sector and not even to the entire public sector. While teachers within school boards are probably a good example of a profession that is relatively gender-free in terms of its pay operation, school boards are not in and of themselves immune from these concerns. There are the classic comparisons of secretaries and caretakers, of people on the clerical side and people in the traditionally male jobs. At this point, the legislation does not cover the school boards, although the school boards receive a significant portion of their funding from Ontario and are public bodies.

Our concern goes further than that. This government has made a very clear statement of principle about pay equity. It is the perception of the Ontario Secondary School Teachers' Federation, and I think of some of our co-operating groups, that the focus of this legislation on the public sector is because it is easy and because nobody wants to tackle the private sector, even though the public sector probably is generally in better shape in terms of pay equity than the private sector.

As the committee that prepared this submission looked through the legislation, it saw no reason why the legislation could not apply to all groups that bargain under the Labour Relations Act and why it could not apply to all groups to which the Employment Standards Act applies. The principles embodied in it as to how to handle organized groups and unorganized groups and as to the notion that collective bargaining, where groups are unionized, is the appropriate way to work out in the first instance the solution to these problems would apply as easily to the private sector as to the public sector. We urge you to consider expanding the scope of the legislation immediately to affect the private sector.

As public sector employees, we sometimes feel a little vulnerable. We feel as though a very close eye is often kept on us by the public, sometimes encouraged by governments and politicians. It is our concern that it will not even necessarily help the long-term goals of pay equity if the initial legislation is focused solely on the public sector. We could find ourselves in a year or two or three with the public sector being held up by those in the private sector who would like to oppose the principle and the concept, as a good example of why it was a bad idea.



We recommend very strongly that the legislation be amended to cover the private as well as the public sector. We go further and recommend that within the context of public sector legislation, if that is all that is to be had, the definitions of "employee," "bargaining agent" and "employer" be expanded to cover all the agencies of the government, municipal and provincial, that were covered by the Inflation Restraint Act of 1982.

We have some difficulty with the exceptions in section 8 of the legislation. We do not see a need for those exceptions to be spelled out. As I looked at the legislation again recently, it was not clear whether those are exceptions as categories, as individuals or how they were intended to apply. There are a lot of women these days in short-term employment who are looking for longer-term employment. The pool of people in temporary employment situations tends to have an enormous number of women. Part-time work, that whole list, needs a very careful look, because many of the people who are most disadvantaged currently are disadvantaged precisely because they are in those categories, even though the work they may be doing as casuals or short-term or temporary labour may be extraordinarily important to the establishment in which they work.

Earlier, we addressed the question of gender-predominant groups and the eligibility. The specific item we have cited here is the classic case of day care workers where there tends not to be a male group that is readily identifiable as the comparison group. Again, it is difficult in reading the legislation to determine how it is determined that a group is doing comparable work. For instance, how will one find a comparison group for female child workers?

15:20

Many of the concerns raised by the Ontario advisory council on the status of women and the Equal Pay Coalition focus on the need for a comprehensive job evaluation system in order to establish what those comparison groups are. Without that type of system identified and in place, it becomes difficult to assess the validity of the comparison groups that the legislation spells out.

We endorse recommendation 8 from the Equal Pay Coalition brief; that is, that the rigid job comparison structure should be eliminated and should be replaced with a more flexible structure which respects the bargaining rights of unions. This is on page four of our brief.

Pay adjustment level is another area of concern of ours. In this case, we are concerned that where the legislation specifies that there is more than one comparison group, the lower group is used for the pay adjustment level. It is our understanding that the federal legislation provides that the highest rate is used. We think that is an admirable principle and we do not see why it would need to be the lowest group. We think there should be a determined effort to find the best fit and not the cheapest solution.

We are also concerned in the pay adjustment provisions that what is currently in the legislation is simply that the wages of no group can be lowered. Here we are looking at two issues from the standpoint of the Ontario Secondary School Teachers' Federation. One is how big the pot is that is used to provide the compensation and the pay adjustment for equal pay and where it comes from.

We are very concerned that the overall effect of the legislation, given the present constraints, which is one per cent of the payroll for the group in question, with the prohibition on simply downgrading wages could result in a freezing of wages of groups that are not in a direct position to benefit from the legislation. We are also concerned that in the case of many of the low-income groups of women, who presumably should be the greatest beneficiaries of the legislation, one per cent of the payroll for that group is a very small amount of money.

We endorse and take the position taken by the Equal Pay Coalition that three per cent of the total establishment payroll, including fringe benefits, should be mandated to be set aside into a pay equity fund, so that amount of money is available outside the collective bargaining process for making the adjustments. Then you do not end up with the tradeoffs and employees set against employees about who is getting which benefit when. This can be seen to be a tapping-up process rather than a simple redistribution of current resources.

We are concerned that there is no provision in the legislation, as it now reads, for retroactivity. The accord in June 1985 spelled out the commitment of the Liberal government to this principle. The green paper came out in the fall of 1985. This legislation was introduced in February 1985. The time lines that the legislation provides for adjustments to come in are, in general, 18 months after a plan is filed with no clear deadline on how long it takes to file the plan. We believe the legislation should state that the plan itself should be retroactive to the date of first reading of this act.

In addition, we agree with the Equal Pay Coalition's position that there should be some provision for interim rough justice adjustments which could then be sorted out once the plan was finalized.

I have already covered the pay equity fund and the size of that fund. On page 6, we address the rights of unions and nonorganized groups, specifically those of groups which are involved in collective bargaining. It is our suggestion that the legislation should provide for cross-referencing with other pieces of collective bargaining legislation. It is not uncommon, either in the Labour Relations Act or in the School Boards and Teachers Collective Negotiations Act, the one we know best, for legislation governing collective bargaining to set out certain minimum standards.

The School Boards and Teachers Collective Negotiations Act specifies that there shall be a grievance procedure and if there is not one written into the agreement, there is one in the act that is presumed to be in the agreement. We suggest that kind of safety net on the pay equity issue would be appropriately placed in those pieces of legislation.

Our fifth area of concern is enforcement and appeals. The legislation now provides that at the point the plan is developed, all employees have to see what the plan says. There is no provision for full disclosure to the employees or to employee groups during the process of developing the plan.

While the legislation provides for participation of organized groups of employees with the employer in the collective bargaining process, the legislation itself does not mandate that job description, salary schedules or statistics about how many people are employed be made available to the employees. Without that information, we believe it will be very difficult for any single employee or any group of employees to assess the appropriateness of the plan they are supposed to be participating in developing.



On enforcement, we are concerned that there are nice statements in the legislation about the arbitrator's decision becoming the plan, but there is nothing in the legislation about what happens if somebody simply ignores the plan, if an employer simply refuses to implement the plan. There are no penalties or enforcement mechanisms specified.

We have some concerns about the single arbitrator selected by the minister and believe the option should be available for either the employer or the employee group to choose a tripartite arbitration panel rather than a single arbitrator. We think many groups may want the single arbitrator, but the more traditional three-party arbitration panel would make sense where either of the groups chose it.

We are very concerned that the legislation as written empowers the commission not to have a hearing when there is a complaint. We strongly urge the committee to consider making it a requirement of the commission to hold a hearing on any complaint.

If I may talk again about the groups that I think many people are most concerned about with this legislation, they are groups of people who are unorganized and who, in many cases, are in lower-paying jobs in the private sector, assuming this might become a model for private sector legislation. The ability to come before a group of people and state your case in person, rather than having to write a brief and make sure it looks good, reads well and that the grammar is correct, is essential to this kind of process. For access to an appeal process, it will be very important for those groups of women who are at the lower end of the socioeconomic scale, whose jobs have traditionally been the lowest paid, to be sure they will have an opportunity to put their cases directly to whatever body is hearing their concerns.

I mentioned the problem of consequences for noncompliance. We would support the recommendation of the Equal Pay Coalition that there be substantial fines for noncompliance. We have some concerns as well about the dual role of the commission in the education and administration of the act and then in the appeal process. We suggest it would make sense to set up at the outset an independent appeal tribunal that would be a permanent group that would sit and hear all appeals on the legislation and would operate both with some permanence and with some independence from the Pay Equity Commission itself. There is a very strong sense on our part that to have the commission both administering the program and judging on appeals puts it in a position of having to juggle priorities and perhaps in a position of conflict with itself.

Those are the concerns of the Ontario Secondary School Teachers' Federation. We appreciate the opportunity to appear before you today and we will be glad to entertain questions.

Mr. Chairman: Thank you for your presentation. We will now have questions from committee members.

15:30

Mr. Polsinelli: Ms. Baumann, I have one question that deals with part of your brief. The intent of this legislation, I understand, is to eliminate the part of the wage gap that is due to gender bias. If we eliminated the requirement in a group of gender predominance--that is, the 60 per cent or 70 per cent factor--how would you propose to identify the portion of the wage gap that is due to gender bias?

Ms. Baumann: It is possible to identify those positions that have traditionally been seen as women's work. I can think of two examples. One would be telephone operators; another would be the garment industry. As I understand it--and I do not have the statistics at my fingertips--both of those are areas where there has been a dramatic increase in the number of males, but there may not have been any upward adjustment in the rate of pay with other comparison groups. Our concern is that groups such as those not be disadvantaged.

Mr. Polsinelli: Do you think the proportion of males in those groups today would be greater than 60 per cent?

Ms. Baumann: I do not think you will find that the proportion of males in those groups is greater than 60 per cent, but it might be greater than 40 per cent. If you have 41 males in a given group, you do not have your 60 out of 100 and you do not meet that 60 per cent criterion.

Mr. Polsinelli: I accept that there may be certain groups where this anomaly has occurred. I take it then that you would be advocating some further criterion to identify the predominantly female groups other than the 60 per cent factor. Once you have identified that, what would you compare it with to determine what wage gap exists as a result of gender bias?

Using 60 per cent as one factor, and then perhaps looking back in history at positions or jobs that have been traditionally occupied by females, once you have identified those additional job groups, what would you compare them with to determine that there is a wage inequity or a wage gap because of gender bias?

Ms. Baumann: One of the things that is very unclear when one reads the bill is how that process is going to go on anyway. The example I cited in the presentation was that of child care workers. It is not at all clear in the bill how you will find a group with which to compare child care workers.

It is our understanding that the intention of the bill is to reduce gender discrimination, but it is also to establish that equal pay is assigned to work of equal value and not necessarily to the same work. We have had legislation in this province for some time that says people should get the same rate of pay for the same work.

No matter how you approach the gender question, the pay equity process will have to wrestle with the question of comparing groups that, at least on the surface, are doing somewhat different jobs. That is where the job evaluation comes in. In the final analysis it is going to have to be based on job content rather than strictly--job content issues have to be able to be put on the table in the discussion.

15:30

Mr. Polsinelli: I would submit, though, that whatever process may be used, you would have to have some system of evaluating the jobs and determining that job A and job B are equal in value. If job A and job B are equal in value and they are both predominantly male groups of jobs, then I do not think finding there is a wage gap between job A and job B tells us anything other than that the workers in job A are being underpaid.

As I understand this legislation, it is intended to rectify the portion of the wage gap that is due to gender bias; that is, systemic undervaluation



of women's work strictly because they are women. To do that, would you not have to compare a predominantly female group of jobs with a predominantly male group of jobs? If you determine they are equal in value but receiving different pay, then I think the legislation assumes that difference in pay is due to gender bias, to systemic undervaluation of the female's work strictly because she is a female. That is the system that has been established in the legislation.

If you eliminate the criterion for determining a predominantly female group of jobs and a predominantly male group of jobs, then what parameters are you using to identify the job groupings, and how would you perform the analysis to determine where the gender gap is and where the wage gap is as to gender bias? I do not see that. It is a position that I think is being advocated also by the Conservative Party in eliminating the 60 per cent requirement.

I submit that if you eliminate the 60 per cent requirement, you have to come up with some other benchmark to determine what is the predominantly female group of jobs and what is the predominantly male group of jobs. If you do not have a benchmark, you are not identifying where the gender bias base discrimination is.

Ms. Gigantes: You have said that 15 times.

Ms. Baumann: I suggest there is more than one way of handling that. In addition to a benchmark, you can have an educational process which allows areas or groups of people who believe they have a legitimate complaint to have their circumstances looked at and examined and evaluated. In the majority of circumstances some kind of guideline might work. But there has to be a process to take care of the establishment with 100 employees which has 41 men, or the establishment of 100 employees which has 68 men instead of 70.

Mr. Richardson: If you came back to your question, you have used the criterion of 60 per cent. But historically there are certain jobs one can describe as women's jobs. I think the point made in the brief is that one of the concerns is that even though men are in those jobs, there is no pay equity with men or women, because they have not been identified on a basis of equal pay for work of equal value. Your 60 per cent, although it meets some of the needs, I do not think is going to meet all the needs and may be too restrictive.

Ms. Hart: Might I have a supplementary on that? One thing we are forgetting is that there is an appeal process, which enables persons who fall outside the 60 per cent to complain that their classification, for lack of a better word, was historically women's work and therefore they should be the subject of a pay equity plan even though they do not meet that criterion of 60 per cent.

Mr. Richardson: It will be interesting to see how many appeals occur. There may be more appeals than meets the eye on this.

Ms. Hart: That may be the case; but, as has been indicated, we need some kind of benchmark.

15:40

Ms. Baumann: The appeal process as it is written now, where the commission is in charge of the appeals and has the ability even to dispense

with a hearing, is not a very satisfactory answer to that. Perhaps the solution is to clear up the appeal process. The combination of the definitions plus the appeal process appearing to be pretty half-hearted and being able to require written submissions rather than hearings and so on would not be satisfactory.

Ms. Hart: Perhaps; but that is another issue altogether. I merely wanted to ask whether you were aware that outside of the 60 per cent there is a process whereby those who are working, men or women, in what is historically women's work, have access to the plan.

Mr. Gillies: I have a supplementary question. I guess we all are getting in on this.

Mr. Chairman: I have a list, and I would like to go to Ms. Gigantes next. If this is on the same point, I will take Mr. Gillies. Otherwise, I will go back to the list.

Mr. Gillies: Briefly, I think Ms. Baumann is quite right. I am thinking back to the scatter chart that the Ontario Public Service Employees Union put before us. It appears that the majority of people we are trying to help with this legislation are caught in one of the predominant groups, but there is still a group in the middle of however many thousand people.

Even given, as Ms. Hart says, that there is recourse to a complaint mechanism, one of the strengths of this legislation is that it is not strictly a complaint-based pay equity system. At least in the initial steps of the legislation, we want to try to capture and bring people in without the necessity of them having to go through some sort of complaint procedure.

I think that is good. Any of us who deals on a regular basis with the Ontario Human Rights Commission, which is basically a complaint-based system, knows the strain it is under, the backlog of cases and the length of time it sometimes takes to achieve justice through that process. It is in the interest of everyone to try to keep the complaints minimal and the coverage maximal. That is why I agree with you. That was not a question.

Mr. Chairman: A fine statement.

Mr. Polsinelli: I would like to continue a bit on Ms. Hart's point about the requirements of determining whether a job is a predominantly female group of jobs and similarly with a male group of jobs. The requirements in the bill are a minimum standard. Even during the proactive stage, if an individual feels she is not being identified properly as participating in a predominantly female group of jobs, she can complain to the commission and the commission would make the determination. This sets up a minimum standard that an individual can complain of to the commission.

I submit that the cases referred to, for example, telephone operators, which may today be 59 or 60 per cent male-dominated--I do not think they are, but assuming they were--would be the ones that, if this were not a minimum standard, would fall through the cracks, but those individuals would be able to make a complaint to the commission and hopefully be included in the pay equity plan.

Mr. Charlton: That is the problem: hoping.

Mr. Polsinelli: I submit that unless you can find a definition that is exhaustive and covers all the contingencies, I do not think--



Mr. Charlton: No. We are not here to ask you whether you want to define this as pay equity or equal value. We are here to do it, not hopefully to do it.

Mr. Polsinelli: We are doing it, with the support of the opposition parties, hopefully.

Mr. Gillies: Hopefully again.

Mr. Chairman: You are the supreme optimist, Mr. Polsinelli. I will go to Ms. Gigantes and then to Ms. Hart in that order.

Ms. Gigantes: Ms. Baumann, if you are right and this does become a model for private sector legislation--there is a possibility we will get private sector legislation--as an employer in the private sector I would start adjusting the ratios of my employees in different fields right now. That is what I would do.

Let me ask you about your interest in seeing cross-bargaining-group comparison. This is a point that was raised and discussed at great length when we were hearing the submission by OPSEU. They made the point to us that given what you call rough justice payment--I have forgotten their exact term for it; they may have used the same term--up front, they would like to negotiate an equal pay scheme with their employer without getting into a job evaluation system for the whole public service that would lead to an infinite amount of cross-bargaining-unit comparisons in terms of job evaluations.

I am wondering how their situation might compare with yours if we were to look at OSSTF and draw comparisons that might be made between OSSTF work and work carried out by public school teachers. How do you see the kind of proposal you are laying out working within a board? Do you see cross-bargaining-unit negotiations with the employees, or do you see joint union negotiations with the employer? Do you think it would lead to a comparison across those eternal boundaries?

Ms. Baumann: You are asking what I think is a very good question that strikes at one of the difficult things about trying to bring in these changes; that is, the relationship between this legislation and the collective bargaining process itself.

If you look at teaching across the province, for example, you will find the differences in the salary scales are not great between public school and secondary school teachers. In many cases, they are virtually identical, although the placement of the group on that scale might vary somewhat, depending on the qualifications. For instance, secondary school teachers historically have had higher average salaries because they were all degreed, whereas not all public school teachers were degreed.

Focusing the initial plan on the employer and the employee bargaining group to develop lodges that responsibility where it belongs. If there is agreement with them to look outside that group, that seems to be something that is possible. Comparisons outside the bargaining unit are probably eventually going to be inevitable, particularly when you look at nonunionized employees.

One of the concerns we have as a union, however, is that--how can I put this positively?--the strength that unionized employees have in collective bargaining is something they fought hard for and worked hard to achieve. There

is something in the process of being represented by a teachers' federation or a group like OPSEU that is in and of itself a very valuable thing. We want to make sure that value is preserved in this process.

Instead of simply setting up an arbitration process that is completely external to the collective bargaining process and that could run roughshod over the historical process of negotiating, we like the fact that the legislation is at least trying to focus the attention of the bargainers on the issue.

Ms. Gigantes: One of the things we have been told by the government in support of Bill 105 is that it has been particularly crafted--and that is the word they used--to deal with the very particular situation of the public service of Ontario; that is why it cannot be extended to other workers. Essentially, you are saying the good part of Bill 105, the recognition of the involvement of the representatives of organized groups in the development of a plan, for example, is quite transferable.

I am curious to know, in thinking of a particular school board, do you think in most cases all teachers, all staff organized with representatives, would sit down with the school board all in one session, with one series of meetings, or do you think the negotiations would go on, bargaining group by bargaining group?

15:50

Mr. Richardson: Maybe I can take a crack at that. From our position, we would want to protect the integrity of our bargaining process, that is, representing our people. I think it is a part of the process that either party will bring in outside comparisons, if you like, or whatever into that process. At present, there are some issues on which all bargaining units or groups within a school board come together on issues that are of mutual concern. However, if anything was going to go into the collective agreement, we would want to reserve the right for us to negotiate that independently of the other groups and protect the integrity of the collective bargaining process.

Having said that, there are many issues in our collective agreements that have been resolved through the kinds of meetings and group discussions you are talking about. I do not know if that answers your question, but I am trying to be as clear as I can that we would not want Bill 105 to override our rights in bargaining collectively for our people.

Ms. Gigantes: I understand. What you are also saying is that it is a possibility that the creation of a plan within a school board might be one piece of work.

Mr. Richardson: I think so, and I can give an example in our own federation office. With all our different groups--and we have union and nonunion employees--we are looking at just such a thing in a group discussion. What goes into any collective agreement is then up to the individual groups, but there will be a model for all of them to look at.

Ms. Hart: I have a number of areas I want to delve into with you. Can I take it from your opening comments that you are here making representations with respect to this bill because you fear the government will not follow through on its promise to introduce pay equity legislation in the private sector in the session that is coming up? This bill does not apply to you.



Ms. Baumann: One of the reasons we are here is that we think it should. We are not private sector; we are public sector. As an employer, the Ontario Secondary School Teachers' Federation is private sector. As the representative of 35,000 teachers, they are all public sector employees who are not covered by this legislation.

Ms. Hart: I will broaden my question. Since the government has said that in the session that starts next week it will bring in a second bill that will cover you and will cover the private sector, are you here because you are concerned that will not happen?

Ms. Baumann: We are concerned that it is being done in two parts.

Ms. Hart: Why is that a concern?

Ms. Baumann: We are not persuaded that there is a need to do it in two parts.

Ms. Hart: We could go around that bush for a while. Let me be more specific. You raised some questions, for example, the concern about day care workers, child care workers, in that they will not have someone else to compare themselves to. That is not a problem in this bill, because this bill only applies to a very narrow group, bargaining units, with many cross-comparisons available within those units.

Ms. Baumann: I reiterate what I said earlier. For those of us who have a concern about equal pay and have looked at this piece of legislation as a model--I guess what I am hearing you say is that this piece of legislation is easier because it is dealing only with the provincial public service; therefore, we do not have to answer all those questions. That is one of the reasons people like us are here asking the questions. We do not see the answers there to the broader question.

Ms. Hart: No, I am not saying it is easier. What I am saying is that there are differences, and I mean to ask you about some of them. One is that it is not a problem under this bill because of the ability to compare jobs within the narrow public service as it has been defined in the bill.

Let us take another one, penalties. In any common law jurisdiction, no penalties can be assessed against the crown, and there is only one employer in this bill, the crown. Therefore, it does not make sense to have penalties if there is no way in which you can assess a penalty.

Ms. Bauman: Your comment is the comment. If that is the case, what is the effect?

Ms. Hart: You do not understand the difference between panalties and being able to sue the crown. You can sue the crown for money owing, but you cannot assess a penalty. The crown is the one that would bring the prosecution. The crown cannot prosecute itself.

Ms. Bauman: If the government as employer, an arm of the government, a crown corporation or one of the groups named in this legislation, refused to implement the plan or implemented it in an incomplete fashion, what action would the government take to ensure that the plan was implemented?

Ms. Hart: There is only one employer in this bill. That is why I am saying that when we move to the second stage, which may be next week, different considerations will have to apply. We will be dealing with many employers, many different situations and a large, nonunionized sector.

Ms. Gigantes: Did you say next week?

Ms. Hart: Do we not open next week?

Mr. Richardson: If I could try to answer your question too, you asked why we are making a presentation. First, we see some responsibility in the event the bill--and we believe it should--had a much broader application. We are trying to advise the committee about things we see that should be in an all-encompassing bill. We think it should apply to education specifically, but to other groups at the same time.

Because you say the crown cannot have any penalties in this bill, I would have to ask, for the workers affected, how the commission or, as we suggest, some arbitrator, makes a ruling that will satisfy a group that may be improperly handled under the bill? For example, in our collective bargaining--and school boards may be different from the crown--the crown is an employer and penalties can be imposed if it violates certain things.

Ms. Hart: The school board is quite different from the crown, yes.

Mr. Polsinelli: I also refer you to section 21 of the bill, the enforcement mechanism. That would give the commission an opportunity to file the order with the Supreme Court and, upon application and ratification by a judge, that order would be enforced as an order of the court. Currently, we are looking at simplifying that procedure if possible. Would you like to make a comment?

Ms. Klein: Perhaps I had better explain a little bit about what happens when that order is filed and the employer is the crown. If it is an order for money payable, under the Proceedings Against the Crown Act, the court merely says that money is owing and due and it is chargeable against the consolidated revenue fund. It is an easy enforcement process.

If a servant of the crown refuses to act, it is possible to cite that servant for contempt in his or her private capacity and that person can be fined or imprisoned, or both, if the contempt continues. I think there are teeth in the enforcement section. I guess the problem for the layman is to realize what an application to the court means. It is for real.

Ms. Bauman: The other question for the layman is probably how accessible the process is.

Ms. Klein: You walk it across to the court and say: "I got this order. Do something." That is an easy one.

Ms. Gigantes: May I ask a supplementary?

Mr. Chairman: We are running out of time and I have two other people. We are not through with Ms. Hart yet. I will allow it if it is a brief one, but you have had quite a bit of time, Ms. Gigantes. I am trying to be fair in the allocation of question time.



Ms. Gigantes: On the question of the penalties in the bill, surely it is not without the imagination of men and women working together with a will to figure out separate sections, one of which would apply to the crown as employer and the other which would apply to other employers, if they had to deal with penalties in two different ways.

Ms. Hart: Just very briefly, one other misapprehension that you have is the base on which the one per cent of payroll comes from. Initially, it comes from the bargaining unit. If there is a bargaining unit that does not--I cannot put it very well--utilize the money because there is not the pay inequity in that unit, it flows through to the bargaining units with less money. That one per cent will always be utilized fully and it is likely to flow through to those groups which make less to start with.

There is one other thing that I will not get into but I will just mention. You throw out three per cent of total payroll. It is one per cent per year and it continues for a number of years. Based on the statistics we have heard about the plans that are in place, their cost has been about four per cent.

Ms. Baumann: We have not addressed the number of years and the three per cent specifically. Reading the section that addresses parts III through VI about the one per cent, it is very unclear how long it takes for that to happen.

One of our concerns is that with one per cent and going year by year, it will take a very long time indeed before you get that trickle down. If you need more with this group and it does not use it all over here, it can take up to four years or so before the adjustments are made.

Ms. Hart: No. It is within that one year. Perhaps Dr. McAllister can explain it better than I can.

Mr. Polsinelli: The requirements are that the employer set aside one per cent of the previous year's payroll to adjust the wage gap. That one per cent is cumulative; so in the first year they would take one per cent, in the second year they would take two per cent, in the third year they would take three per cent of the previous year's payroll and so on until the complete wage gap had been closed.

Our studies indicate that it would probably be closed within a four-year period, but if it happens to take five years, the plan will run an additional fifth year. This is unlike the Manitoba plan, for example, which puts an absolute cap of four per cent on the adjustment. Ours is open-ended. It is one per cent a year cumulative until the wage gap has been closed.

Ms. Gigantes: One per cent a year does not give you three per cent at year three.

Mr. Polsinelli: It does not?

Ms. Gigantes: No, it does not.

Mr. Polsinelli: Dr. McAllister, perhaps you would like to explain that.

Mr. Chairman: We are getting into debate.

Mr. Polsinelli: We have asked for an explanation.

Dr. McAllister: The point that Mr. Polsinelli is making is that by the third year, you will have paid out three per cent of total payroll in pay adjustments.

Ms. Gigantes: The way he was saying it made it sound as if it is an accumulation of payroll assignment of one per cent, year one; two and two; and so on. That is not how it works. The way you were saying it, it would lead someone reading what you had said to think that.

Mr. Polsinelli: I do not understand what you are saying.

Ms. Gigantes: If you read the text of what you said later, perhaps you will understand what I was saying.

Mr. Polsinelli: If you look at the employer's position at the end of year one and if you look at the employer's position at the end of year four, at the end of year one the employer has committed one per cent of payroll; at the beginning of year four, he has committed three per cent of the previous years' payroll.

Ms. Gigantes: Over three years.

Mr. Polsinelli: That is right.

Ms. Gigantes: But not in year three. The way you spoke to it suggested that in year three he was making a commitment of three per cent for year three.

Dr. McAllister: In a sense, that is correct. There are some slight misinterpretations going on here. With the first payment which will come in year two, the employer will pay out \$44 million, based on our estimates. For the third year, there will be a requirement to add another one per cent of payroll, which is an additional \$22 million.

However, the employer will also be paying out the first \$44 million in year three because they do not make pay equity adjustments one year and then stop in the next. In a sense, what Mr. Polsinelli is saying is correct; the employer will in that year be paying out \$66 million, which is three per cent of payroll.

Another way of stating it, which brings you to the same result, is to say that there is a one per cent liability for each year the program has been effect. Anyway, \$66 million will be paid out during the third year, which is three per cent of payroll. However, it is only an additional one per cent of payroll over what was paid in year two; so I think there is a little bit of confusion here.

Mr. Polsinelli: Were we saying the same thing?

Dr. McAllister: I think you were saying the same thing.

Ms. Gigantes: If that is what you were saying, then you were saying the same thing.



Mr. Polsinelli: That is what I was saying.

Mr. Gillies: I will be brief. Your appearance before the committee is very timely because the amendments being put forward by the opposition parties will include your members under this bill. We will see then whether the government proceeds with the bill, but I am pretty sure the amendment is going to bring in your members.

I have two questions. One is that I had thought, quite frankly, that one of the professional groups that would not be affected very much by pay equity would have been the teaching profession, but we had an appearance before the committee last week that would suggest otherwise. The example that was used was a group of part-time extension teachers, who were predominantly female, teaching side by side with a group of, if you will, regular teachers within the mainstream of the board, who in this case happened to be predominantly male, and there was quite a marked differential between the salaries.

In your experience in the federation, have you noticed much gender-based discrimination within the teaching profession?

Mr. Richardson: I will take a first crack at that. Since about 1950, wage scales have been similar for men and women in the teaching professions--that is, those scales that would be identified under a collective agreement.

The discrimination comes up in a number of ways. First, if we are talking about occasional teachers, who come in at a rate less than the regular teachers, they will be predominantly women, and they have been historically. There are probably other things that are not specifically related to wage scales, but certainly there has been discrimination over the years in respect of promotion and things such as that. Whether overtly or otherwise, that is the case, and we have been concerned about it.

You are quite right in that when we first looked at this, we wondered from a pay equity point of view whether it was a concern. When we delved into it, we found there were cases where there were concerns in the teaching profession. Our women have been concerned about certain aspects of pay equity, but primarily in the part-time appointments, the occasional teachers and so on, items such as that. Ruth may not have had them.

Ms. Baumann: The most glaring examples you would likely find right now would be some cases we have been looking at in terms of the application of the Education Act and the School Boards and Teachers Collective Negotiations Act, situations in which a number of school boards have hired people, I would say probably mostly women, to teach part-time in programs.

An example would be a program that runs in the city of Toronto, where people are paid continuing education wages to teach adult immigrants in church basements under the aegis of the school board during the day and they are not even being recognized as members of one of the federations. They are simply being paid on a piecework basis by the school board. We have been working with the Ontario Teachers' Federation to find out why those people are not members of the federations and are not covered by the collective agreements.

Similar situations have occurred. There is a case that has been before the courts with Humewood House in the city of York. At least five or six of

those seven employees are women. That is a case where the city of York board has simply refused to recognize those teachers as part of the bargaining unit and has been paying them night school wages for teaching the credit program during the day. That has been before a grievance arbitrator, before the Ontario Labour Relations Board or in the courts for four years now. There are some pockets that will certainly be glowing examples.

16:10

Mr. Gillies: This legislation will have an effect on the teaching profession, particularly if the gender predominance feature, the 60 per cent and 70 per cent, is done away with.

I am most intrigued by your suggestion of an independent appeals adjudication process. I think there is some merit to that. Certainly, that is the route we have seen taken with the Workers' Compensation Board and other agencies in recent days. I wondered if you had any thoughts on the makeup of such a board. Do you feel the people on it should be drawn from management and labour, or should it be an internal operation?

Ms. Baumann: Ideally, there should be people with experience on both management and labour sides involved in that. The committee that prepared our position had quite a lengthy discussion about that and about whether there was a need for an independent tribunal. In the end, we were unanimous in feeling there was the need for an independent tribunal.

The concern expressed originally by a couple of people was that it has to be a group that, while independent, has enough continuity so it is not coming in out of the blue and making decisions without any kind of historical base or continuing expertise. We recommended a fairly permanent body whose job would be to adjudicate appeals, so you would not be setting up a new panel every time there was a problem.

Mr. Wiseman: If I could follow along--I think Ms. Gigantes started on this, and I asked about it the other day--pretty well everybody who came in representing a bargaining group said they wanted to see the bargaining unit remain intact after this came through. In your case, I was glad to hear you say that the elementary and secondary teachers were getting closer together. That may be closer to being true in the city, but there are still a lot in rural Ontario where is quite a gap between elementary and secondary.

Everyone has asked that the bargaining unit be kept intact, but from an employer's standpoint, if you are going to keep pretty well the same four per cent--say you were the same in the secondary or elementary--and you bargain now as two different unions or federations, the secondary teachers settling and then the elementary teachers, do you not think the writing is on the wall and either you will have to amalgamate those two and go as one or you will defeat this legislation if and when it goes through?

You may have the secondary school teachers getting six per cent or bargaining harder--they have to bargain on behalf of their people to justify the paying of union dues--or you may have the elementary teachers' federation bargaining a little harder, and that gap will open up again. From an employer's standpoint, why go through it all twice if you are going to pay the same percentage to both? Why not have one union representing both to deal with it the first time, and then you are finished with it? I can see both unions wanting to keep their identities, but I do not think it will be very practical if this legislation goes down the tube.



Mr. Richardson: First, I do not think an employing school board will let the salaries differentiate that much.

Second, as an organization, there are things other than salaries that we are concerned about and want to represent to our members that may be quite different at the secondary level from what they are at the elementary level.

Third, it is a long historic goal or matter that you are trying to discuss, and it has been established in the legislation covering our collective bargaining. It is my opinion that Bill 105 in its present form or in any amended form does not need to have an impact on that. That will be a responsibility of the employer in the bargaining process, to dovetail whatever has to be done. I do not see it as an issue in this bill.

Mr. Wiseman: If it is not an issue, I just wonder why every union or every organized group that has come before us has said: "We want to remain. We want our identity to be in place after this bill takes place." Everybody must have the gut feeling that something may happen.

For the life of me, I cannot see all these dragged-out meetings between the school board, trustees and the union to come up with two settlements if they are both going to come down the tube with this four per cent, five per cent or whatever the dickens it is. We all have too much to do with our time to do that. I know you are being very cautious, but I think there must be an underlying worry that this might take place.

Ms. Baumann: Some of the employers have been complaining for years about the length of time it takes to do that.

Mr. Wiseman: Even some of the negotiators.

Ms. Baumann: Occasionally, they get somebody to listen to them when they suggest all the bargaining should be taken over provincially or whatever. I do not think there has been a lot of teaching within the school boards. I do not think there has been a lot of serious consideration of that yet by government.

Mr. Wiseman: I was not really getting at that. I was getting at some of your own membership who have talked to me about the time they put in during negotiations and one thing and another. Some of them will even tell you off the cuff that they feel the female teachers' federation and the male teachers' federation should be all one, and even now there should be one governing the separate end of the public rather than both being separate. They will tell you that off the cuff. They may not tell you as the head of your union, but they tell me as an individual, at any rate, and some of my people.

Ms. Baumann: What we have now are five federations established and recognized in the collective bargaining legislation and in the Teaching Profession Act. Those things may change. We want to see that, no matter what, the teachers control those changes; but who represents them and how they will be represented are not changes that come about in a happenstance fashion as a result of some other legislation.

I suspect the reason you are hearing from so many organized groups is that they are concerned about preserving the collective bargaining process and their identity. It is very tempting. We all endorse the principle of equal pay for work of equal value. The most tempting solutions are those that run roughshod over the collective bargaining process and the whole principle of

representation by a union, because the most tempting solutions are imposed rather than negotiated.

What you find when you listen to Morris and myself, the Ontario Public Service Employees Union, the Canadian Union of Public Employees or any of the other unions, is that we are very concerned that as we pursue equal pay for work of equal value, the ability of our organizations to function as unions in all their aspects--collective bargaining, representation in the work place and working conditions--is preserved and that the integrity of the organization is preserved.

Mr. Wiseman: Mine was not that they did not have collective bargaining. Mine was to reduce the numbers from what they are at present. As some of them have told us, they are probably going to end up with the same five per cent. My worry is that if you have all the different unions representing, some are going to be harder bargainers than others and the gap is going to be the three per cent or whatever it is over three or four years and then it is just going to go again.

Because of one being stronger in the past--the secondary school teachers' federation has been a better bargainer than the elementary, in my estimation, and it gets more for those teachers--who is to say that will not happen again? That has nothing to do with this bill. It is just that it is a better bargainer. In my opinion, if the same union were looking after both, it would make sure that gap did not exist.

16:20

Mr. Chairman: With respect, Mr. Wiseman, I wonder whether I could ask you to wind up your comments so we can get on. We have another group waiting, and we are well overdue now.

Mr. Wiseman: That is fine. I was just--

Mr. Chairman: I want you to know the speech was good. I enjoyed it, but I have to move on to the next group.

Mr. Wiseman: It is appreciated, Mr. Chairman.

Mr. Chairman: Does that wrap up what you wanted to say?

Ms. Baumann: That is fine.

Mr. Chairman: I know there could be a further response, but I think we have to close off the session. I want to thank you on behalf of the committee for your presentation and for patiently responding to the questions. Thank you for your input into a very complex and difficult issue. We appreciate it.

Ms. Baumann: Thank you for the opportunity to be here.

Mr. Chairman: Members, refer to exhibit 32 in your package of information. Patricia Hoggart will please come forward now. On behalf of the committee members, I do apologize that we are running a touch late, but we will give you the full time if it is required. Patricia, welcome to our committee deliberations. Whenever you are ready, you can start with your presentation.



Ms. Hoggart: Okay. Do you have a copy of my presentation?

Mr. Chairman: Yes.

PATRICIA HOGGART

Ms. Hoggart: I would like to speak to you today about the problems facing registered nursing assistants in private nursing homes as they relate to the proposed legislation for equal pay for work of equal value. The information I have about this has been from the newspaper.

In a private nursing home, it is a common occurrence to find an RNA in charge of one floor or nursing unit while a registered nurse is in charge of another floor. An RNA cannot legally give intramuscular injections and must phone the supervisor before giving a PRN medication; that is, a medication that is given only when needed. However, these are minor occurrences. In my opinion, the RNA in charge of one floor is doing work of equal value to the employer as the RN in charge of the other floor.

Some employers might disagree with this because of the restrictions they place on the RNA's job description. An RNA, having taken a medication administration course, can transcribe doctors' orders, take phone orders from a doctor, administer narcotic drugs such as Tylenol with codeine or phenobarbital, and administer insulin. A private nursing home may not allow the RNAs to perform one, several or all of these duties. Granted, some RNAs are not able to do these things independently, and some RNAs do not want the responsibility, but a lot of RNAs are capable, have the experience and necessary education and enjoy the challenge of a charge nurse position.

RNAs in private nursing homes are generally paid less than RNAs in hospitals. In the hospitals, RNAs give basic nursing care; they do not administer medication, transcribe doctors' orders or take charge of a nursing unit. Their care and nursing assessment are important in the hospital setting, but I feel their level of responsibility is different from that of the RNAs in private nursing homes, and yet they are usually paid more.

I am an RNA with five years' experience working in private nursing homes. Before that, I worked in a general hospital for one year.

I would like to see the proposed legislation on equal pay for work of equal value expanded to include public sector employees. I would also like this legislation changed to include equal pay for work of equal value between any two people. By that, I mean I do not think it should be gender-related. I realize that in many situations, women are paid less than men, but so are women being paid less than other women.

I feel that RNAs in private nursing homes are often doing work of equal value to their employers as are the RNs, but if this legislation is gender-related, I am afraid their situation will be ignored. To whom would you then compare an RNA? Her position would have to be compared to a position held by a man, since most nurses are women. That would probably mean the RNA's position would have to be compared to a non-nursing position. To me, this does not make sense. It does not have to be that difficult.

On television on Saturday evening, October 4, 1986, Attorney General Ian Scott said the proposed legislation is gender-related. In the examples given on television, job requirements, such as education, were compared between two

very different jobs. The education requirements may be similar, or sometimes the man was required to have less education than the woman but was being paid more. I feel this is unfair.

A registered nurse's course is two to three years in a community college, whereas the RNA's course is one year. RNAs are required to have taken a course in medication administration before working as a charge nurse. The type or length of education differs, yet the positions are similar. RNs in private nursing homes earn several dollars per hour more than RNAs doing basically the same job; yet the RNAs often earn only less than a dollar per hour more than health care aides and generally earn less than RNAs in hospitals. I feel this is an unfair situation. Other RNAs I have talked to and worked with over the past five years have expressed their wishes to have their wages closer to the RN's wages and felt they were being poorly compensated for the work that was expected of them.

I hope that whatever legislation we end up with will assist RNAs in private nursing homes in gaining wages that reflect the degree of responsibility entrusted to them.

I thank you for the opportunity to speak on this matter.

Mr. Wiseman: Having had some experience along the lines you talk about, it has been my understanding that all drugs administered have to go through or by a registered nurse, even in a nursing home, and she or he takes the responsibility for administering those drugs. Anyone else can hide behind that RN if something goes wrong.

As you mentioned, there is quite a difference in the training. For an RN, it has gone back to a three-year course from two years with one year kind of interning. In my estimation, that represents perhaps getting a little more--if you are going to take the responsibility for the drugs, you may take the responsibility for running the institution. In most nursing homes, they have very few RNs--probably one RN and a lot of RNAs and so on.

That person takes a lot of responsibility. It may look to the people working around as though he or she may not be doing much more, but he or she still has the overall responsibility. I, for one, being married to an RN, know the responsibility that carries with it. I might as well be truthful with you. I cannot for the life of me see RNAs getting as much as RNs, or even close to it, where they take that type of responsibility.

Going back to being closely connected with the nursing homes when I was involved in the Ministry of Health and my wife having had a small one for a number of years, I know if she were here, she would hit the roof. As a husband, I guess I should say a few words on her behalf.

Ms. Hoggart: I guess it all depends on what position you are in. But when I give medications, if I make a medication error, I am fully responsible for anything that happens. I am responsible for the medications I give. When I am in charge of a floor, I am responsible for what goes on on that floor.

Mr. Wiseman: Does the owner or administrator of that nursing home know you are giving codeine and other narcotic drugs with your training?

Ms. Hoggart: Yes, absolutely. They hire me for that.



Mr. Wiseman: I think the Minister of Health (Mr. Elston) should check that out, because I do not think it is right.

Ms. Hoggart: As I said in my presentation, they set out the policies. We are allowed to do a certain number of things.

16:30

Mr. Wiseman: I am not questioning that you may be called upon to do that, but I do not think it is legal under the Nursing Homes Act in licensed nursing homes to have an RNA administering drugs. That is a no-no.

Ms. Hoggart: Then you have an awful lot of nursing homes in violation.

Mr. Wiseman: Mr. Elston should check that out because things have not changed since 1975.

Ms. Hoggart: The Nursing Homes Act says there must be an RN in charge of each nursing unit for the day shift and an RNA in charge of each nursing unit on the evening shift and on the night shift.

Mr. Wiseman: That may happen, but not to give drugs legally.

Ms. Hoggart: Yes, as long as there is an RN. Why would they offer medication administration courses for RNAs if RNAs are not legally allowed to give out medication? I have been giving out medication for five years legally.

Mr. Wiseman: I have to check that out. I am honestly not aware of that ever happening in nursing homes.

Ms. Gigantes: Are you saying you administer medicines but you always have to go through the formality of getting the say-so of the RN?

Ms. Hoggart: The medication you give at 8 a.m., 12 noon, 4 p.m. and eight p.m. is ordered that way, and you go ahead and give it, but not medication that is ordered for pain every four hours, which is only when needed or PRN. A person says, "I have pain." You say, "Okay" and call the supervisor and say, "Mrs. Smith has pain in her leg and would like a Tylenol." She says, "All right, give it," and you give it, but she is aware of it.

Mr. Gillies: If there is any confusion at all, this is where it is. I do not remember the wording of the Nursing Homes Act, but the supervision and ultimate responsibility for the administration of drugs is with the RN, although it is often the RNA who gives them. The medication trays that are prepared for individual patients are supposed to be prepared under the supervision of the supervisor, but very often the RNA gives them out. As you said, that goes on in all the nursing homes.

Ms. Hoggart: It is not the giving out of medication I am talking about. There are five floors in the nursing home that need to be run. They have health care residents and one charge nurse. Maybe on the second floor the charge nurse is a RNA and on the third floor the charge nurse is an RN. The basic difference is that the RNA has to call the supervisor to give a PRN medication or, if someone needs a vitamin B-12 injection once a month, the RN supervisor has to come and give it. Otherwise, the RNA is on alone doing the same thing as the RN. Maybe the public does not fully know what is going on.

Mr. Wiseman: The RN still takes the responsibility when you phone to say: "So-and-so is having pain. Can I give this painkiller?" He or she okays that.

Mr. Gillies: I take a lot from your brief because it points to one of the great weaknesses in this bill we have before us. I do not think the suggestion, to you, Doug, or anyone else, is that RNs and RNAs should be paid the same, but when you look at the four determinants we look at in determining pay equity, that is, skill, effort, responsibility and working conditions, it may well be, and I think in this case it is the fact, that there is a similarity in a couple of those categories that could lead to a determination that the two salaries should be pulled more closely in line, not necessarily be the same but more closely in line.

I agree with you. I know from experience that RNAs are performing very similar jobs to RNs and to other medical practitioners, and I think they are underpaid. What I take out of your brief is that RNAs are in what any of us might consider a job ghetto. I do not mean that as a disparaging term. It is a way of making a living that is definitely traditionally female-dominated and definitely relatively low-paying.

The question you raise in your brief is, because of the 60 and 70 per cent feature of the bill, to whom do you logically compare the RNA to determine whether there is need for an adjustment under pay equity? You have RNAs, who would definitely be over 70 per cent female. You have registered nurses, who would definitely be over 70 per cent female. There is your problem. I do not know if this is a question. I am just saying I see what you are getting at and I think you have hit the nail on the head in terms of one of the problems we are trying to highlight.

Then you say to yourself, to whom do we logically compare the RNAs? To find another health care profession which would be over 70 per cent male, where do you go? Do you go to the medical profession, to doctors?

Ms. Gigantes: Medical administration.

Mr. Gillies: Medical administration, or I guess you could go in the other direction to orderlies, who have a lower level of training than RNAs. The point is we know logically where the comparison should be made. It should be made between RNAs and RNs. Unless I am wrong, under Bill 105 you could not do that.

Ms. Hoggart: Only in private nursing homes. This could not work in hospitals.

Mr. Chairman: I think the parliamentary assistant wanted to clarify the whole matter.

Mr. Gillies: I do not think he can.

Mr. Polsinelli: No, we do not want to clarify the whole matter but Mr. Gillies, I am sure you are aware that Bill 105 was structured to apply to the public sector and the narrow public sector. I guess this is the point we have been trying to make all along. It may not be adequate to meet the needs of the broader public sector and the private sector.



If a comparison has to be made--for example in Ms. Hoggart's situation--it would be difficult for her to find a group to compare herself to, but she does not have to limit herself to other individuals in the health care field. If there is a group of gardeners, she could compare herself to the gardener, the parking lot attendant or the cleaning staff. You could very well find gardeners or groundskeepers who are paid more than RNAs. Then it would be a determination of the relative value of the work, and at that point you would have to make an adjustment. You do not have to limit yourself to a comparison with other individuals in the health care system.

Mr. Gillies: I agree with every word you just said; no quarrel whatever. It just seems logical that one of the groups to which one would want to compare RNAs in terms of skill, effort, working conditions and responsibility would be RNs.

I also take your other point in good faith, but let me flip the coin. You disagree with me about the extension of Bill 105 to the broad public service and I take that in good faith. It is becoming more and more apparent to me that if we are to do that and we want to, then one of the features of the bill that would have to be changed is gender predominance.

Mr. Polsinelli: I am glad you concur with me in everything I said, particularly that this bill is inadequate and inappropriate for the broader public sector and the private sector. I suggest you wait until this fall, the next session of the House, when the next bill dealing with the broader public sector and the private sector is introduced. At that point, we can as a committee determine the appropriate requirements for the broader public sector and the private sector. Why would we want to deal with this bill and make holus-bolus amendments to it that may not satisfy all the requirements?

Ms. Gigantes: To keep the Ontario Public Service Employees Union happy.

Mr. Gillies: I do not want to get into an argument, but the other side of the coin in the parliamentary system is that we are determined to amend the bill to the broad public sector. In order to do that, we have to amend it to make sure it works there. One of the features that has to be amended is gender predominance.

Mr. Polsinelli: Mr. Gillies, we recognize the exigencies of a minority government, and I am glad to see you will support us also in our attempt to introduce pay equity to the private sector.

Ms. Gigantes: You do not need their support for that. You have ours.

Mr. Polsinelli: We may not get it.

Ms. Gigantes: May I ask one question, Ms. Hoggart? Were your wages controlled under the wage restraint legislation?

Ms. Hoggart: In 1983?

Ms. Gigantes: Yes.

Ms. Hoggart: Yes. At that time, I was working in a nursing home. I replaced an RN on night shift and I was supervisor of the whole nursing home myself, with five health care aides. They were unionized. The RNs were

unionized, but the RNAs were not, and I was being paid less than the health care aides for most of a year. We were trying to get into the union ourselves, but they said we would have to wait until the next contract. Because of that legislation, there was going to be another year of being paid less than the health care aides.

16:40

Ms. Gigantes: You may not have understood that we are proposing to have legislation that will cover the public sector separately from the private sector. I can see no good reason for that at all. We are proposing to have this legislation affect the people who were affected by provincial wage restraints.

Mr. Mitchell: Do you mind if I jump in? Something came out of your questioning. You said that during the restraint period you were in charge of the whole nursing home.

Ms. Hoggart: At night.

Mr. Mitchell: At night there was no RN available?

Ms. Hoggart: There was an RN available by phone. I spoke to the health inspector about that this year. She said they are required to have a certain number of RN hours; each resident must have a certain number of RN hours per month. If that is used up on the day and evening shifts, it is possible to have an RNA in charge of the nursing home at night. I was for more than a year. I replaced an RN and I was being paid less than a health care aide for doing the same job as an RN.

Mr. Mitchell: Thank you.

Ms. Gigantes: Stay young, Robert.

Mr. Gillies: Do not think for a minute that this is in any way unusual. Most of the nursing homes with which I am familiar in my riding are being run by the RNAs in the middle of the night.

Interjection: That is right.

Interjection: Sure.

Mr. Gillies: The RN is on the end of a phone somewhere.

Ms. Hoggart: I do not like the implication that RNAs are not capable of doing this simply because they are only RNAs.

Mr. Mitchell: It was because of the very points you raised and the way the questions came that we wanted to clarify exactly what you are doing.

Mr. Polsinelli: Ms. Hoggart, I thank you for your appearance today. You are perhaps a classic example of why we need pay equity legislation in the private sector. I look forward to the participation of both opposition parties when that bill is introduced in the House.

Ms. Hoggart: I have a question. If this is to cover only a small portion of the public sector, what portion will that be?



Mr. Gillies: The bill as drafted is to cover Ontario provincial public servants such as the employees of ministries and six agencies. The amendment the opposition parties are going to move will extend it to everyone who was covered by the restraint program in 1982. In other words, you would be captured, and so would teachers, school boards, hospital employees, municipal employees--all those people.

Mr. Chairman: Thank you very much for your presentation and for answering the questions.

Members of the committee, we have a couple of questions we have to deal with before we adjourn. The staff needs some direction with respect to where they go following the completion of the hearings. I would like to spend some time discussing what you require from the staff by way of information that we want put together before we get into clause-by-clause. There is the question with respect to scheduling not only for this Thursday but also for the beginning of next week, when we will obviously have concluded the hearings. The mechanics of the bill itself have to be addressed. Can we talk about that for a few minutes? I will try not to keep you long, depending on how quickly we can get through this. Are there any views?

Mr. Polsinelli: I would like to bring forward a preliminary view. I request that we allow smoking, at least during this session of our deliberations.

Mr. Chairman: I think that is quite in line. I would like to support that.

Mr. Mitchell: Vetoed.

Ms. Gigantes: Is it warm enough to open a window?

Mr. Chairman: Let us open a window. Does anybody want to bring sandwiches in?

Mr. Polsinelli: Do you have any objections?

Mr. Mitchell: I will go along with helping you put another nail in that box.

Mr. Chairman: Since you put in a few cartons yourself during--

Mr. Mitchell: There is nothing worse than a reformed--

Mr. Chairman: I know. In terms of the information you want from the staff, can we discuss that first?

Mr. Gillies: I would like to suggest something that has been very helpful in the past when we were dealing with complicated pieces of legislation. I know it is a lot of work on the part of the research operation attached to this committee to compile a paper for members of the committee that shows the bill as drafted on one side of the page and on the other side suggested amendments from all the submissions that were brought forward. It is a big job, it takes a couple of days of work, but it is much easier when we are going through this stuff to see the various positions taken by at least the major organizations that appeared before us. We have done that in some committees before, and I think it would be helpful.

Mr. Chairman: One of the reasons I am raising the question is that the amount of work you want done in the way you want it structured for your consideration at a later point will depend on when we can get back into these things. There is a staff time problem. Staff are already somewhat concerned about how they are going to have everything ready for you early in the following week. It is obviously not going to be done by Thursday, depending on what you want to do for Thursday.

Mrs. Ward: If this is not needed for Thursday morning, it is not a problem. I can easily have it ready for the beginning of next week. The problem I was facing, in that much of the work is being done as I am going along and Ms. Mellor has been very good in forwarding everything to me immediately as it is received, was knowing whether it should be ready Thursday morning. Logistically, not finishing until four o'clock tomorrow afternoon creates a problem. To be useful, I want to know when you need it.

Mr. Chairman: I do not think the committee expects you to be able to perform a miracle overnight. It is up to the committee, but unless someone feels strongly about what is to be ready on Thursday, it was always my feeling that we would get into it on Monday or Tuesday of the following week, depending on how you want to schedule your meetings.

Mr. Gillies: I agree. I do not see any way we can wrap our minds around amendments we will be putting forward on Thursday when we are going to be hearing delegations until late Wednesday afternoon. If we can have such a summary before us, that is helpful when the opposition parties particularly are preparing amendments. I strongly suggest we not start clause-by-clause until next week.

Mr. Polsinelli: It would also depend when we could receive that summary. I am sure the opposition party members and the government members would appreciate some time to review the summary and make their observations. If we were to get it on Monday--

Mr. Chairman: Monday is a holiday.

Mr. Polsinelli: If we were to get it on Tuesday, it might be appropriate to delay clause-by-clause until the next meeting of the committee to give us an opportunity to go through it.

Mr. Wiseman: If we get the information we ask for by Tuesday or Wednesday, to draft the amendments you want and one thing and another, I do not think it is realistic to think we will be back next week doing clause-by-clause. Will it not take a few days? If we do not get it until Tuesday, then we have only Wednesday.

Mr. Gillies: Not to slow it unduly, we do need some time to get into it.

Mr. Mitchell: What happened to the suggestion that was made last week about going through the bill initially in a kind of rough clause-by-clause? I cannot remember the words we used.

Ms. Gigantes: A dry run.

Mr. Wiseman: Are we not going on the new time schedule that finishes on Thursday nights?



Ms. Gigantes: Yes.

Mr. Wiseman: So we have only two days.

Ms. Gigantes: Monday and Tuesday, and Monday is a holiday.

Mr. Polsinelli: The House goes back into session on Tuesday.

Ms. Gigantes: That is right.

Mr. Polsinelli: We may not have an opportunity to look at whatever research can prepare for us.

Ms. Gigantes: Are people essentially saying we want to delay heavy discussion until the following week?

Mr. Polsinelli: We may have to.

Ms. Gillies: Is it not usual that committees do not sit the first week the House comes back?

Ms. Gigantes: When was that invented?

Mr. Gillies: I do not know, but I have noticed that in the past couple of session beginnings, it seems to be a couple of days before committees creep back into action.

Ms. Gigantes: Maybe you always sat on Thursday.

Mr. Polsinelli: I understand from the clerk that committees are scheduled for next week. I am wondering about the propriety of meeting on the same day the House comes back into session. I am sure members will have many other things on their minds that day.

Mr. Chairman: It is a problem day.

Ms. Gigantes: I have no problem with meeting that day, but I do think there is a problem if some of the amendments are going to be dependent on presentations we have heard this week. It is possible that legislative counsel may have difficulty catching up with that process. That is the only barrier I see.

Ms. Gigantes: Maybe what we should do, all in all, is to leave it until the following week and assume that by then everything will be pulled together.

Mr. Polsinelli: May I also point out from the government side that it would be helpful if we could have the opposition amendments as quickly as they are prepared.

Ms. Gigantes: Are you going to table more?

Mr. Polsinelli: Ours have been tabled.

Ms. Gigantes: Are you going to table any more?

Mr. Polsinelli: Not that I am aware of at this point, but there may be further amendments.

Ms. Gigantes: We would appreciate any further amendments you have. If we get all the amendments from Lynn as quickly as possible, will Lynn get them around?

Mr. Polsinelli: Ms. Gigantes, as soon as our amendments are prepared, we will share those with committee members as quickly as possible.

Mr. Chairman: Have we arrived at a consensus with respect to meeting not next week but rather the week following because of the time factor? I believe staff will have adequate time to put together what is required by the committee at that point.

What is your wish with respect to Thursday? Do we do anything on Thursday, or do you want to cancel Thursday completely? We will have all the hearings done, obviously, by Wednesday night. Is it agreed that we will not be meeting this Thursday? Okay.

The committee adjourned at 4:53 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

WEDNESDAY, OCTOBER 8, 1986

Morning Sitting



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Substitutions:

Knight, D. S. (Halton-Burlington L) for Ms. Hart

Mitchell, R. C. (Carleton PC) for Mr. Villeneuve

South, L. (Frontenac-Addington L) for Mr. D. W. Smith

Wiseman, D. J. (Lanark PC) for Mr. O'Connor

Also taking part:

Gillies, P. A. (Brantford PC)

Clerk: Mellor, L.

Staff:

Ward, B., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy

Minister, Labour Policy and Programs

Klein, S. S., Policy Adviser, Policy Branch, Labour Policy and Programs

Polsinelli, C., Parliamentary Assistant to the Minister of Labour

(Yorkview L)

From Organized Working Women:

McDermott, Dr. P., Executive Member

Cameron, Dr. B., Provincial Secretary

From the Ottawa-Carleton District Council of the Canadian Union of  
Public Employees:

Ballantyne, M., Representative, CUPE Local 2424

Kass, J., Vice-President

Gruda, S., Eastern Ontario Regional Representative, CUPE Ontario

Division Women's Committee



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, October 8, 1986

The committee met at 10:09 a.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: Good morning, members of the committee, we are about to get under way with this morning's hearing. I would like to welcome to our discussion this morning Patricia McDermott, who represents the organization known as Organized Working Women. We would like to welcome Patricia. Perhaps you could introduce your guests to us in a moment.

For members of the committee, the report you can refer to is exhibit 34 in your material. As soon as Patricia is ready, she can start. If you can introduce your guests, we will appreciate that.

ORGANIZED WORKING WOMEN

Dr. Cameron: I am Barbara Cameron. I am the provincial secretary of Organized Working Women. I would like to thank the committee for the opportunity to speak to you today.

Organized Working Women is an organization of union women. Our members come from a variety of unions, both those affiliated with the Ontario Federation of Labour and nonaffiliated unions such as teachers and nurses. We were founded in 1976. We are an autonomous organization and a rank-and-file organization.

For the past 10 years, we have attempted to increase the participation of women in unions and to encourage unions to take up the issue of women's equality more vigorously. Our basic principle is that women need unions and unions need women. We consider ourselves part of the women's movement and part of the labour movement.

Organized Working Women has been a member of the Equal Pay Coalition since its founding, and we support the brief the Equal Pay Coalition has submitted.

We wish to focus our comments today on the clauses of the bill that particularly affect collective bargaining. I would like to emphasize that our members probably as much as anybody are aware of the importance of language in a contract or a piece of legislation. We will be focusing our remarks quite specifically on some of the language in the bill.

Pat McDermott will be making the presentation for Organized Working Women. She is on the executive of the Toronto chapter of Organized Working Women and she is our representative to the Equal Pay Coalition. She is a sociologist and a lawyer. She teaches in the law and society program in the social science division at York University.

Dr. McDermott: I will begin right on page 1. What we have done here is to go through the bill and pinpoint some of the more troublesome clauses. The order of the clauses we are going to address is simply the order within the bill. It has nothing to do with how important we think they are.

I will start with section 1: "'arbitrator' means a single arbitrator appointed by the minister." This is a problem for the Ontario Public Service Employees Union, because as I point out, they do not have the right to strike and we feel they should have more involvement in selecting the arbitrator. I have referred you to section 11 of the Crown Employees Collective Bargaining Act, which OPSEU bargains under. In that clause, you will find there is a system whereby the bargaining agent appoints a nominee, the employer appoints a nominee and then they agree upon an arbitrator. Just on a practical point--it is not in the brief--we really wonder about the pool of arbitrators available in Ontario to handle these types of cases.

On page 2, section 1 continues with the clause that defines "group of jobs." If jobs are to be grouped together merely for the purpose of compensation and not because the nature of work required to perform them is similar, which job in that grouping will be used for the comparison? We are making an incorrect assumption to assume that each of the jobs in the group is worth the same. This is exactly what a pay equity plan is supposed to find out, and you undertake a job evaluation scheme to see exactly what they are worth. Just because they are lumped together, you would have to take that classification apart and go through it in a very detailed way.

Another definition, "representative job level in a predominantly female group of jobs" means the one that has the greatest number. Why should one level represent the entire series? I just wonder about the logic here. We are making possibly an incorrect assumption that the employers have constructed the classifications in a gender-neutral and/or equitable manner, that the jobs below the representative job level are worth less and that jobs above it are worth more. This problem highlights the danger of bringing in a supposedly gender-neutral job evaluation scheme and essentially placing it over a potentially gender-biased and inequitable scheme.

As well, if the classification system is not constructed using the four factors as set out in the bill, this can lead to further warping of value. You probably remember that in OPSEU's presentation they talked about the new office administration group, which will construct a 13-level classification based on different factors. They are going to pick one of those levels, according to this bill, and let that move through and establish value. When you have constructed a job evaluation plan to begin with, it is a problem to introduce one over it. You are making assumptions that might not be correct to make the legislation work.

Moving on to page 3, "predominantly female group of job," here we support the Equal Pay Coalition's position on the rigidity of a predominant cutoff, especially in this piece of legislation, since the effective date essentially freezes the data, you will realize. In a rigid cutoff, this predominance is clearly a problem. On that day, whoever is in or out, according to the amendment, the number of persons in that position establishes it throughout the plan. Given the rigidity of the effective date, why not set the predominance at true predominance of 51 per cent?

Also throughout that section, clause 1(1)(a) through clause 1(1)(d), there is little flexibility to approach the commission and ask that a group be



designated. I think most of the groups are looking for some type of mechanism to say, "Historically, nursing work has been done by women, but somehow in the last three to six months or so many years, this has dipped below this percentage cutoff and now we want to claim this is female-predominated work." I think a mechanism could be built in.

We would like to stress that having to obtain the employer's agreement on designation in clause 1(1)(b) does not offer any protection. Every additional group of designations as predominantly female means more money the employer must pay out. I am quite sure there will be a tendency not to agree to those increased designations.

Just one minor point. I think the proposed amendment should read 60 per cent or more, just for precision in drafting, if you will.

On page 4, again we are looking at the problem of using one level in subsection 5(1). In subsection 5(2), why does it say the lowest? Surely the average would be more equitable. This way there would be no pressure placed on a male group being used as comparables.

Section 5 says when pay equity is achieved. Does this clause mean that if at the beginning of the plan--say, in the first year of a possibly five- or six-year payout phase--a female group receives equal pay with its comparable group, that is it? They do not get any increases throughout the plan until section 26 possibly opens up a complaint. Are they frozen with their comparable? What happens in that situation? Surely they should have their comparable as a target throughout the entire plan until the last adjustment.

There is an allusion to this possibility in the reasons for one of the amendments; it is not clearly built into the bill. Going back to why it is the lowest rate, I would like to suggest this pressure we are talking about on male comparables is a reality of collective bargaining. In the category system the Ontario Public Service Employees Union works under, if one category or one group of male comparable jobs gets an increase, it means an increase for the women too. There could be bargaining table pressure placed on that group. I think the bill is flawed in that it assumes an across-the-board increase. Even the amendments here assume all those categories with which OPSEU will be comparing across the board are getting the same increase, and that is not necessarily so.

Page 5: A serious problem--and most of the briefs have pointed this out--is designating these temporary positions. You saw the York University Staff Association brief, pointing out that their Canadian Union of Educational Workers unit could wipe out the whole unit because they are all students. Casual positions and the temporary labour shortage open a huge gap that we do not think is closed simply by introducing one more basis for a complaint. We will talk about the complaints in a minute, but it is not a solution to introduce it as a complaint. We do not think they should be in there.

Also, in section 8, we are wondering about the good-faith enforcement practices the commission has available to it. How can it enforce its good-faith requirements?

10:20

Section 9 guarantees only that compensation practices will not be reduced. What about being frozen or red-circled?

Page 6, section 10: I will focus on this section with a little detail. We think this represents the biggest danger for bargaining agents. Primarily, our concern is that we do not understand the section; we do not know what it means. What precisely does "prevails over" in collective bargaining in the world of industrial relations mean? Given the elaborate structure of the scheme proposed in the bill, parts III, IV, V and VI, and for the same people--you realize parts III, V and VI can be involved in three different plans. Payments, although potentially small, could conceivably go on for years, especially under part VI.

What happens to bargaining for those covered by the bill while they are in this plan? What happens to the female groups we talked about earlier who achieve pay equity early on in the scheme, the first year of the scheme? If they must wait to complain under section 26, if this is what section 26 is for, which we are not clear about either, they may have lost years of salary increases.

Although the amendment to that section refers to across the board, the right to get salary increases as they are bargained is not built into the bill, the fact that you get those salary increases as the plan goes on. If a plan, even in part VI, is deemed to be incorporated into--this is of most concern--and to form part of the relevant collective agreements, can employees take their complaints about pay equity to the grievance settlement board? This is a serious jurisdictional problem. I am sure the grievance settlement board would not want to handle them, would not know how to handle them and would not consider it within its jurisdiction. If it is part of the collective agreement of the Ontario public service, they would have the right to take these grievances to the board.

This was raised by the York University Staff Association brief. Can you negotiate pay equity or equal pay for work of equal value separately, or does this bill lock you into what will be considered pay equity or equal pay for work of equal value?

Page 7 refers to the payouts in section 11, which is probably the most incomprehensible and is extremely convoluted. I challenge someone to read some of these sections and explain them to someone else in a clear, precise way. We stress that the redrafting, if any is done, should produce language that is understandable.

Let us look at subclause 11(3)(b)(ii). What is available at the time of the first adjustment? It is not clear from most readings of the section; one or two per cent of the payroll. We have been told and we should assume that there will be two per cent because the plan has been proclaimed and has been going on for two years. There is likely to be two per cent in there, but I am not sure that language does it.

Why should only one per cent of the bargaining agent's total payroll be available? What is the logic? Surely there are far fewer people outside the bargaining unit. We have been told 2,000 women and some men, I am assuming, in their predominant categories. They have this pool of managerial salaries; I do not know the number. Why should they get access to that money for their plan when there might be enough money in the bargaining unit plan?

The employer is liable for one per cent of payroll. We strongly encourage that the one per cent of total payroll for the bargaining unit, or whatever percentage is agreed upon, be available to any groups that need it



throughout the entire plan and not limit the moneys to specific plans. The bill seems to be directed at that big Ontario Public Service Employees Union 55,000 unit. Why limit the money to redressing pay equity for that? With this way of doing the one per cent outside the unit, it is the same employer. They should solve the problem as quickly as possible.

Page 8: There is an amendment that further restricts what the bargaining agent can negotiate. Why would you want to start out with a specific formula for how the payouts would take place? Why could you not bargain to start with those that are most disadvantaged? I do not see why you could not--not assuming there would be an 18-month kick-in of the plan--designate groups as pay equity recipients and pay them all out right away, up front, as they are decided upon. Why do you even have to get into this laborious and convoluted payout system? It is more restrictive. There is a logic in suggesting that people who are most disadvantaged should get the money faster. I do not think it solves the favouritism complaint.

The proposed amendment regarding subsection 11(1) seems to be a monitoring mechanism. What if monitoring the data does not come to the commission? What recourse and what kinds of excuses will they accept for the plan not flowing along smoothly? What sanctions are available to the commission to insist that this data is filed? What happened from subsection 11(1) to the job audits or otherwise? This new proposed amendment assumes there are simply job audits, the results of all job audits prepared for the purpose of implementing the plan, and it does not contemplate or otherwise.

The next page is the famous part you have all seen a million times. This chart has posed great difficulty for comprehension from the beginning. I believe we got this chart when the bill was tabled at the press conference. To this day, I cannot quite figure out how this chart would work.

If you look at page 9, after looking at the chart, it is supposed to describe how the whole plan fits together, how they all kick in and are all going on at once. We do not see how this would work. We do not see how parts III, V and VI, which will all be applied to the same people and all conceivably going on at once, could be completely different plans. As you well know, plans could result in different valuations. People could be getting different points. The whole thing would be a shemuzzle and it could undermine any faith people had in this process.

Just a few comments about the Pay Equity Commission. The Pay Equity Commission, I assume under section 20, accepts and makes recommendations under section 20 about how you can fix up your plan. We assume they are accepting a gender-neutral plan. This is the same commission under section 25 that you also take your complaints back to. Clearly, there is a problem here, probably even a charter problem of conflict. You cannot take your complaints back to the same commission that has already said it is gender-neutral. Something else has to happen there.

What is the status of complaints that go to the root of the plan? Here, I am sure, is an ambivalent situation. People will want a strong complaint mechanism. If the plan is developed by a big management consulting firm, we believe it is gender-biased and it will not work potentially. You want to launch a strong complaint that goes to the root of the plan, but will this hold up the plan and how long, and do we want it to? It opens the way for everybody complaining about the plan, that it is not gender-biased or coming up with all kinds of things. There is no reason a plan would go forward if it were gender-biased. You would have to solve all these complaints. It is a

problem having a complaint system that could conceivably hold up the whole process for years, as these things do.

On page 10 is a proposed amendment to section 26. I do not believe this opens up a complaint-based mechanism, as has been suggested. It could be narrowly construed as to relate back to what is meant by pay equity when gender-biased compensation practices are defined by an arbitrator or the commission. Also the word "introduce" could be a problem. Introducing pay practices under a legal analysis could be assumed, but we are not introducing new pay practices here; these are simply our old pay practices. These are concerns.

If there is an intent to open up a real complaint-based thing at the end in section 26--frankly, I do not think the intent is there in reading that clause--we can borrow language from other pieces of legislation. We mentioned the Ontario Human Rights Commission. You could also lay out the mechanism for what is meant, any new gender thing based on equal pay for work of equal value, so complaints could flow from there.

These are not all the problems we have with the bill legally, but we have touched on the main ones. That is it. I am open for questions.

Mr. Chairman: Questions from the members of the committee can be entertained at this time.

10:30

Ms. Gigantes: I want to thank you for your presentation and your brief.

I will take you to page 2 and go over your comments on "group of jobs."

Dr. McDermott: If you read the clause, it says, "'group of jobs' means a grouping or series of jobs that bear a relationship to each other because of the nature of the work required to perform them and that are organized in successive job levels, and, where there are no such job levels, means jobs that are grouped together for the purposes of compensation."

Do you read that to mean they are grouped together for purposes of compensation and, because of that, is there an assumption here that the jobs they are doing are equal? Or are you going to go into a category--in which I understand some of these units that are covered by this bill are, and certainly would be if it is extended--where people are simply grouped together for purposes of compensation?

You would have to go in and take apart that grouping and do an evaluation of different groups to see whether the jobs they perform are in fact grouped together because of the nature of the work that is being done. I do think there is a problem.

Ms. Gigantes: I think in particular of the example that was given to us from York University staff where they had one grouping of 65 and another grouping of 95, as I recollect. These were called the computer series and the technical series. Then there was another group of 800 staff people involved that was an ungraded or unclassified group.

I was wondering whether we could get a comment from staff or from Mr. Polsinelli on what that clause is supposed to mean in the light of the questions Dr. McDermott is raising.



Dr. McAllister: The easiest way to answer this is to refer to a concrete example in the classification system of the civil service. I guess what we will find as we look across even the organizations that are covered by the bill is that there is obviously not a uniformity in terms of approaches to classification systems. For example, I believe in one of the organizations there is a banding system. In any event, to provide you with a concrete example--

Ms. Gigantes: Could you tell us what that means? You said, "In one of the organizations there is a banding system." What does that mean?

Dr. McAllister: How about if I do it from comparison? I will give you the easy example first and then explain a more difficult situation where obviously it will take a little more work to determine what a group of jobs is.

Ms. Gigantes: Yes.

Dr. McAllister: In the civil service at present, you have job levels such as secretary 1, 2, 3, 4 and 5 where the work is obviously of a similar nature. Therefore, if you look at the first part of the definition, "a series of jobs that bear a relationship to each other because of the nature of the work required to perform them and that are organized in successive job levels"--such as secretary 1, 2, 3, 4, 5; presumably, level 5 is of greater complexity and a more difficult job and receives a higher rate of pay--a series such as the secretary series would be considered a group of jobs according to this definition.

Of course, regardless of what the employer had classified as a group of jobs, one would always be free to complain to the Pay Equity Commission that there was a discontinuity within those or between particular levels of a group. If for some reason in a group of jobs you found that the bottom level, level 1, was always filled only by women and that there was no continuity, for example, in terms of movement between job levels, one presumably could argue to the Pay Equity Commission that although this might be classified in a classification system as a group of jobs, really what you had here were two groups of jobs--a lower level, which was always predominantly female, where the work was somewhat different from that in the upper levels--and you could presumably make a strong argument. This is generic legislative language. You are not stuck by what an employer calls a group of jobs.

The reason for having such a definition, where we are trying to maintain relativity to as great an extent as possible within existing classification groups, is that if one had a system where you were pulling out different levels where there already was established--and for good reason--a relationship between pay, promotion and type of work performed, you would end up with a proactive pay equity program that would pull apart an existing classification system. I do not think it was ever anyone's intent to implement pay equity and at the same time destroy existing classification systems.

Now to a comparison: In some organizations you will find jobs grouped together for pay administration purposes according to level of pay, where the relationship in terms of the nature of work between the jobs is nonexistent. You may find an organization where you get very dissimilar types of jobs lumped together in groups for pay administration purposes by the employer. This definition requires that the nature of the work performed bears some relationship and that they be organized in levels. You would obviously have to go into that organization and try to determine what would be appropriate groups for the purposes of pay equity. In other words, you should not assume

the employer's existing pay administration and classification system on paper provides you with an automatic identification of groups if that system does not group jobs together based on the nature of the work performed.

You also asked a question about the latter part of the provision in section 1(1): What does it mean at the end, where it says, "and, where no such job levels exist, means jobs that are grouped together for the purposes of compensation"? This would allow you to get at the situation where, let us say, you had only one swine specialist and no swine specialists 1, 2 and 3 in an organization. We would want swine specialists who are not in a group organized in successive levels to be examined for the purposes of pay equity if it were a predominantly male or predominantly female group of jobs.

I do not think there is any particular magic to that end of the definition. It just allows you to look at very small groups, if you like, where there are not levels and to have them included potentially in the pay equity program. We could get at those types of jobs that do not have levels because there are not different levels of work involved.

Dr. McDermott: Careful reading of this could indeed exclude people. You would have to put in a clause that said, "If jobs are grouped together for the purposes of compensation and the work does not bear a relationship," and then go from there to build in something that would allow people to get into the "group of jobs" definition. If they are grouped together for the purposes of compensation and they do not do similar work, at the moment this is the weakness of the clause. Because of the "and" there, it could conceivably be construed that they are not in the group of jobs. This is our concern. It is a draft. I do not think the language is there to--

Ms. Gigantes: I think of the Ministry of Community and Social Services seamstress who was before us and whether she or a lawyer could figure out whether that final phraseology means action could be taken on her behalf. It is difficult to follow that.

I have one other question. You have endorsed the Equal Pay Coalition's brief. It has suggested we reorganize and redraft this bill so we get payment to women most in need of compensation right up front in the process of implementing this legislation. It has further suggested that we should be talking about a dedication of three per cent of total payroll per year by employers.

If we had those two items, plus a complaint system that was effective, open and clear and that could be implemented following that, do you think we need much more in terms of defining a planning process, as Bill 105 has done? In other words, will the dedication of a significant portion of total payroll, for example, urge employers towards the completion of the job, given the possibility of the complaint mechanism swinging into effect if they do not get it done?

Dr. McDermott: I am not talking about the OWW brief now. Although our organization supports the Equal Pay Coalition's brief, and we are here on our own as well, because it is a coalition, there are things in that brief we do not all agree with, and it is a compromise and we vote on it. My problem with what you have just said is that I think you have to have a defensible logic of giving money out quickly to anyone. The coalition's brief is silent on exactly how that would be done.

I can refer you again to OPSEU's presentation. OPSEU is also a member of the Equal Pay Coalition and has had extensive meetings over the past year on



exactly how this works. Putting together that approach, some type of mathematical look at the wage gap, could provide a feasible rationale for a quick payout. I am not sure you could justify it without some rationale. Do you get what I am saying?

10:40

Ms. Gigantes: Yes, I understand what you are saying; but I wonder, particularly in organized work places, whether that would not necessarily be a component of the negotiation.

Dr. McDermott: With the restrictions, the 90 days, instant arbitration and then very little involvement, it could be quite a passive role for the bargaining agent. But if the bill allowed the bargaining agent to actually negotiate some type of other plant and there was much more flexibility in what that could look like--that is why I pointed out the job audits or otherwise. I thought there might be some room in the bill to go a different route, if you will. I do not think this bill allows that at all. If it did, you could provide a rationale for a fast payout of some type.

Mr. Gillies: Thank you for your brief. I find some very provocative thoughts in here. You have raised one issue I had not wrapped my mind around yet. It is on page 3 of your brief, the question of who determines female predominance. If it is 60 per cent plus--I might add this is a feature of the bill we do not like, but it has to be dealt with anyway; that is self-evident. The point you raise arises out of clause (c) where the employer determines. What kinds of problems do you see arising there? Can you paint a scenario for us?

Dr. McDermott: We echo the Equal Pay Coalition's brief here. The predominant category debate is the rigidity of it, and it allows manoeuvring within it. Even if you did accept a true predominance of 51--and there is some compelling logic there that if this is a gender-based piece of legislation and it is specifically drafted to address gender predominance problems, 51 per cent is precisely predominant--we are concerned that there is too much room to manoeuvre, that people can be moved in and out of categories and shuffled around to--

Mr. Gillies: To achieve a purpose.

Dr. McDermott: Yes; to get out of paying the bill. The predominance issue is one that when you look at the data, you start to realize how many people are cut out of the plan. It does open up a charter challenge, logically, to the women between the 51 per cent and the 59 per cent who are cut out, although they are in a gender-predominant plan.

We talk about building in a mechanism for going and say: "Look, cafeteria help from 1943 right up to 1968 had always been gender-predominant. As soon as this bill started to approach, men were put in there. They created a new category or something, and we think this was done to avoid the plan." That type of complaint is not contemplated by this legislation.

Mr. Polsinelli: Can I have a supplementary on that, Mr. Chairman?

Mr. Gillies: I was just going to ask you actually, Claudio, or Dr. McAllister--perhaps it is in the bill somewhere and I am missing it--can you give us an idea of how you see clause (c) operating? In the case of an employer determining predominance, what factors do you anticipate being taking into effect?

Mr. Polsinelli: Perhaps what we can do is look strictly at the definition contained in section 1 of the bill, where "predominantly female group of jobs" and "predominantly male group of jobs" are identified. We should remember that this legislation deals with the narrow public service and builds on the strengths of the collective bargaining process.

The definition is a very permissive one, in which 60 per cent means an automatic inclusion. If it is less than 60 per cent, clauses (b), (c) and (d) apply. If there is a consent between the employer and the bargaining agent that a group should be included, it will be included. If that consent cannot be obtained, if there is a dispute about whether a group should be introduced or should form part of the predominantly female groups of jobs, either of the parties, the employer or the bargaining agent, can file a complaint with the commission and have the commission determine the issue.

We hope at that point the commission will take into consideration evidence such as the fact that they were cafeteria staff that had been predominantly female for 50 years, but once pay equity came into effect, the employer shuffled out some of the women, put in some men and changed around the figures. A reasonable pay equity commission would make the determination that in that type of situation they should be classified as a predominantly female group of jobs.

Dr. McDermott: May I make a point on that? Your problem with it is that it does not seem logical. People read it and think, "Why would an employer, who is already handling the more than 60 per cent and the 70 per cent comparison, designate yet another group?" I think that is why you cannot get your mind around it. Why would employers do this? I do not know. Your answer is as good as mine. They might want to designate something that has 58 per cent men or 68 per cent men that has a lower salary as a comparable. We could look at this as a weakness in the plan.

Dr. McAllister: If I can just provide a slightly technical answer to that, we obviously discussed this bill with the employers and we have been through it with our employer organizations. I do not mean to speak on behalf of the employers, but I can tell you their response to this provision.

In the implementation of pay equity, I do not think they feel they have an interest in excluding people. If they are going to be providing a pay equity adjustment for one predominantly female group that is automatically included because it has 60 per cent, they do not have an employer interest in having people who are just below that level excluded. It upsets the relativities in their systems between, for example, two different female groups, which may have close to the same levels of gender predominance, but are slightly different.

I think one can logically think of where an employer would have an interest in having some groups included automatically. For example, in negotiations, I would not necessarily assume under clause (a) that it would be only the union that would be arguing for the inclusion of particular groups, although I am sure it might make stronger arguments than the employer. Anyway, I understand that is the employer position on clause (b).

Mr. Polsinelli: Mr. Gillies, the target of this bill is the narrow public sector, which is very heavily unionized, so in many senses the bill is permissive in the sense that it builds on the strengths of the collective bargaining process, as I said earlier. Both sides can reach a resolution of



the various issues. This is specifically one area where we hope the collective bargaining process will come into play and that they will reach a compromise on which groups will be covered and which groups will not.

Ms. Gigantes: May I ask a supplementary on that? Is it not possible that there is an employer interest? Given that there is an allocation of one per cent a year for payroll adjustments to provide so-called pay equity, the fewer people who claim that one per cent, the quicker the job will be done. I think there is an employer interest in making sure that the number of people who can make a claim through these designations is limited. I cannot follow that there would not be an employer interest.

Mr. Polsinelli: Is that a question?

Mr. Gillies: The one thing the parliamentary assistant said that allays my concerns somewhat is if a determination is made by the employer under clause (c) that the employees feel is unsatisfactory, they can complain.

Ms. Gigantes: Within 90 days of the filing of the plan.

Mr. Polsinelli: Is that not the whole basis of it? You have your minimum cutoff, and your minimum cutoff is a group that is predominantly 60 per cent female; those would definitely be included. What we are discussing here are basically those other groups that may have fallen through the cracks. I am suggesting that the legislation is sufficiently permissive so that those groups that may have fallen through the cracks would not fall through the cracks because (a) you have the bargaining agent, who we hope will be looking after their interests; and (b) if the bargaining agent does not look after their interests, the individual employees can complain to the commission and make an argument that they be included as a predominantly female group of jobs.

Mr. Chairman: Is there anything further, Mr. Gillies? You still have the floor.

Mr. Gillies: No. Thank you very much.

Mr. Chairman: Are there any further questions? There being none, I thank you for an interesting presentation and certainly for highlighting some of the difficult parts of this bill that we are trying to come to grips with. We appreciate the time you have taken not only to prepare your presentation but also to be with us today.

May I suggest that we take a five-minute break for purposes that may be of some interest to some members of the committee.

The committee recessed at 10:52 a.m.

11:02

Mr. Chairman: We can get started with our 11 o'clock group. We have the Canadian Union of Public Employees district council from Ottawa-Carleton. Morna Ballantyne will be representing that group. Would you introduce the rest of the group you have with you this morning? Then you can get on with the presentation you wish to make to the committee. Good morning and welcome to our committee.

OTTAWA-CARLETON DISTRICT COUNCIL, CANADIAN UNION OF PUBLIC EMPLOYEES

Ms. Kass: Good morning. I am not Morna, but I will introduce the others.

Mr. Chairman: That is the third group in a row. I go by the name that is on the list, and I am getting a little paranoid. From now on, I think I will introduce the group and not give the name, because I am running into some problems with that. However, we would like to welcome you anyway, even if you are not Morna.

Ms. Kass: But Morna is here.

Mr. Chairman: Fine.

Ms. Kass: We had just figured to do it in a different order.

Mr. Chairman: To confuse the chairman. Right?

Ms. Kass: That is right. I am Jamie Kass. I am vice-president of the Ottawa-Carleton CUPE district council. I am also a member of CUPE 2204, which is the Ottawa-Carleton day care workers.

This is Sylvia Gruda. She is the eastern Ontario regional representative on CUPE's Ontario division women's committee and also a member of CUPE 2424, which is Carleton University support staff. On my right is Morna Ballantyne, who is the representative from CUPE 2424 and also a member of CUPE district council's women's committee.

We welcome the opportunity to express our views on Bill 105 to the standing committee on administration of justice. Our council represents 15,000 employees in all occupations in the Ottawa area public sector. Our members include hospital workers, day care workers, municipal employees, university employees, social service workers and school board employees.

As members of CUPE, we fully support the positions put forward by the Ontario division of CUPE and the Ontario Federation of Labour in their respective submissions on Bill 105 to your committee. We are not here to repeat everything that these groups have expressed so well but rather to explain the specific concerns that our locals have with the legislation now before you.

As local union leaders, we can give first-hand testimony of the inequities in our work places that Bill 105 must be amended to address. We believe we are in a good position to explain what kind of legislation will work in practice and what will not.

A number of the CUPE locals in the Ottawa area documented pay inequities in the work places in the written responses to the Ontario government's green paper on pay equity. This collection of briefs gives a dramatic but a very true picture of the situation facing large numbers of workers. Unfortunately, this situation will not be remedied unless you, the legislators, take immediate steps to amend Bill 105 to cover all public sector employees and to introduce an equal pay law for the private sector.

There are a number of reasons we are particularly concerned that private sector workers also be covered by equal pay legislation. First, there is an



even greater need to address sex-based pay inequities in the private sector. As discussed in the green paper, the pay gap is wider in the private sector than in the public sector: 38 per cent of all women in Ontario compared to 23 per cent for women in the Ontario public service.

Another reason of special importance to public sector employees is that if there is no legislation covering the private sector, or if it is less effective than the public sector legislation, there will be an even greater financial incentive for public sector employers to contract out work to the private sector. All that will be accomplished then is to transfer one more work to a sector where employers benefit from paying women less than they would otherwise be paid.

While we call for an extension of Bill 105 to cover all public employees, we also call for the bill to be amended. In our view, Bill 105 will deal neither with the gender wage gap in the public service nor with the gender wage gap in the broader public sector unless it is amended in a number of areas.

We do not intend to use our time before this committee making detailed suggestions for changes. Instead, we would like to spend our time giving you an understanding of the situation facing our members and explaining what kind of legislation we think is required to deal with the situation.

Ms. Gruda: A review of the briefs to the government's consultation panel on the green paper prepared and submitted by the Ottawa-Carleton CUPE locals reveals that our members are concerned about pay inequities within bargaining units, between bargaining units and between establishments.

CUPE 503, which represents both the inside and outside workers of the city of Ottawa, the regional municipality of Ottawa-Carleton, the Ottawa-Carleton regional board of health and the Humane Society of Ottawa-Carleton, reported large pay differences between the starting rates of employees in predominantly female occupations and those in predominantly male occupations within the same bargaining unit.

For example, the starting rate for a work practice supervisor in the regional municipality of Ottawa-Carleton is \$24,944. The starting rate for a teaching homemaker in the same establishment is \$18,049. Both jobs involve teaching skills to participants in social service programs. The difference is that the practice supervisors teach skills usually acquired by men--example: carpentry--while the teaching homemakers teach skills usually used by women--example: sewing. The practice supervisors are all men. The teaching homemakers are all women. The men get paid \$6,895 more a year.

Five of our local hospital unions are involved through the Ontario Council of Hospital Unions in central bargaining with the Ontario Hospital Association. A key demand is equal pay. The hospital classification schedules provide further clear examples of inequities within the same bargaining units.

For example, CUPE 870, representing the workers at the Perley Hospital, described a situation in the housekeeping department where male cleaners earn \$9.43 per hour and the female housekeeping aides earn \$8.76 per hour. Upon examination of the job descriptions, the only significant difference in the duties of these positions is that the male cleaners from time to time, and in teams, operate heavy mechanical floor polishers, which are motorized and glide along the corridors washing and waxing. With this exception, there is very little difference in the work performed or in the value of that work to the

institution and to the patients it serves, yet the wage differential between these positions is 67 cents an hour, or \$1,306 per annum.

By the way, it might be noted at this point that the hospital workers, without the right to strike, must rely on achieving pay equity through interest arbitration, not known for making precedent decisions. Their award is expected shortly.

Pay inequities between predominantly female bargaining units and predominantly male bargaining units within the same establishment were identified by CUPE 2424, which represents the clerical, secretarial, administrative, library and technical staff at Carleton University.

In its brief to the panel on the green paper, CUPE 2424 illustrated the pay discrepancies between the two major units on campus by comparing the starting rate for a clerk-typist 3 in CUPE 2424, now earning \$8.72 an hour, with that of a groundskeeper 2 in CUPE 910, earning \$10.37 an hour.

The minimum job requirements for a clerk-typist 3 are grade 12 education and two to four years of experience, including secretarial and/or business training. The clerk-typist is required to type accurately, word-process, answer telephone or over-the-counter inquiries and have good office skills.

The minimum qualifications for the groundskeeper 2 are grade 10, experience in grounds maintenance and snow removal, good physical health and the possession of a class D driver's license. The groundskeeper 2 performs ground maintenance operations, including snow removal.

While the value of the two jobs, measured in terms of skill, working conditions, effort and responsibility, seems to be at least equal, the groundskeeper 2 earns \$1.65, or 19 per cent, more an hour than the clerk-typist.

The special problems of pay inequity facing employees in female-dominated jobs within female-dominated bargaining units within female-dominated establishments were identified in the brief presented by CUPE 2204, which represents day care workers in private day care centres.

The job of day care teacher is almost exclusively female. Because the work performed is considered to be women's work, it is paid less. It is often said that because some mothers look after children at home for free, day care workers should not expect to get paid much to look after children in centres.

CUPE 2204 reported that at a profit day care centre just organized, the staff wages range from \$8,400 a year to \$10,400 a year. Those assistant teachers and teachers in the local who have been unionized much longer earn \$16,944 to \$22,723 a year.

A survey conducted for the study entitled *The Bottom Line: Wages and Working Conditions in the Formal Day Care Market* showed that the average wage for Ontario day care workers in 1984 was \$7.12 per hour, or \$13,800 annually. Clearly, the wage rates for both union and nonunion daycare workers continues to be well below those paid to employees in sectors where men tend to be employed, regardless of the high value of the work performed in day cares.

11:10

Ms. Ballantyne: It seems to us that Bill 105 does not deal adequately with any of the situations described above, even if it were amended



to cover all public employees, simply because Bill 105 does not clearly state that it would be illegal for any employer in Ontario to give unequal pay for work of equal value.

Bill 105 defines pay equity in very narrow terms and specifies that pay equity is achieved when very specific conditions are met. We are concerned that employers may achieve pay equity under the terms and conditions of Bill 105 without having to pay every woman in the work place equal pay for work of equal value.

For example, section 5 of the bill states that pay equity is achieved when the top rate for the representative job level in a predominantly female group of jobs is at least equal to the lowest-paid job in a predominantly male group of jobs if the two jobs are of equal or comparable value. If this provision were applied at Carleton University, pay equity could be achieved without having to raise the rates of the clerk-typist 3 in line with the groundskeeper 2.

In fact, pay equity, as defined in Bill 105, has already been achieved between the CUPE 2424 clerk-typist and the CUPE 910 groundskeeper, because the top rate for the female-dominated clerk category is \$10.36 an hour, already more than the \$9.72-an-hour wage earned by the university's groundskeeper 1, the lowest-paid comparable job in the predominantly male group.

The fact that only one or two clerks earn the top rate does not enter into the calculation. The legislation only requires comparisons between the highest-paid females in a particular group and the lowest-paid males in a comparable group. As a result, employers such as Carleton University could continue to pay female clerk-typists substantially less than the male groundskeepers and the gender wage gap would remain unchanged.

In our view, the legislation also sets far too narrow limits as to how the value of jobs is determined, as to which jobs may be used to determine relative value, as to how the pay differences between jobs are identified and as to how the pay gaps are closed once identified. We support a legislative approach that allows more room for unions--where they exist--and employers to negotiate appropriate pay equity plans, including the method of job comparison and wage adjustment.

The model pay equity legislation drafted by the Ontario Federation of Labour is particularly good in this regard. It defines pay equity to mean equal pay for work of equal value regardless of gender, and it allows a flexible approach to the determination of value and the implementation of equal pay.

Under the model legislation, a pay equity program negotiated by the employer and trade unions could include measures such as the equalization of base entry rates, an increased minimum wage, a program of comprehensive or partial evaluation and/or across-the-board settlements. Further, the model legislation provides that a minimum of three per cent or total payroll of the previous year be set aside each year by the employer and allocated directly to the pay equity program, the specific allocation of adjustments to be negotiated where there is a trade union involved.

Ms. Kass: We urge this committee to examine carefully the OFL model legislation and amend Bill 105 in line with it. We are convinced that if implemented in both the private and public sectors, this legislation would offer a direct and practical solution to the concerns we have identified at a

local level. The only situation not addressed is that faced by women working in establishments that have only female-dominated occupations. We believe other special measures must be taken to raise the wages of women in these ghettos.

In closing, we would like to address briefly the issue of funding equal pay for work of equal value in the broader public sector.

As employees of government-financed institutions, we are very aware of the direct effect that the provincial cutbacks have both on the quality of services offered and on our wages. It seems to us that unless provisions are made for separate and additional funding by the government of Ontario for pay equity in the broader public sector, women employees will have to win equity in the work place by competing with the needs of those we serve, many of whom are also women or other victims of discrimination--the poor, the ill and the elderly.

We want good, strong, effective pay equity legislation. We do not think the users of our public institutions should have to pay the cost in the form of lower-quality services.

We have copies of all the submissions that the Ottawa locals made to the green paper, and we can give them to you if you do not have them.

Mr. Chairman: Thank you very much for your comments this morning. I will turn to the committee for any questions the members might have. Mr. Polsinelli has indicated he would like to go first.

Mr. Polsinelli: Thank you for the brief and for flying or driving to Toronto to make this presentation to us.

There is a section on page 6 where you talk about job rates and job comparisons. It seems to me you may have misinterpreted how the legislation will actually work. I am going to ask Dr. McAllister from the ministry to explain how section 5 of the bill operates, what a job rate is, what a group of jobs is and how the comparisons are made. I suspect that in your analysis it would operate differently.

Dr. McAllister: I would like to say, not entirely facetiously, that from your description of what the clerk-typists and the groundskeepers do, the clerk-typists are worth a lot more than the groundskeepers. Because of that, I would like to go through the comparison you outlined on page 6 and try to point out how the bill will work, which might be a little different from the interpretation given here.

As to the job comparisons that would be undertaken, let us assume you are correct and there is some job of comparable value in the clerk-typist group and in the groundskeeper group.

You would have to find the representative job level in the clerk-typist group, which would be the group with the largest number of employees. Let us assume that is the middle level of the clerk-typists.

Then you would look at the groundskeeper group to try to find a job level that was of equal or comparable value to that job level in the female group. It could be the lowest level of groundskeeper or it could be the highest level of groundskeeper. From your description of the two jobs, it sounds like it would just as likely be the highest level of groundskeeper as opposed to the lowest level.



The male comparator level would have to be the level within the whole group that was found to be of equal value to that female job level in the female group. The adjustment that would be required once you found the appropriate comparator group would be based on looking at the highest rate for that male job level and the highest rate for the female job level, not the highest rate for the female and the lowest rate for the male.

The scenario you have drawn would be valid only if it were found that the lowest level of grounds keeper was the one that was equal to the job level within the female group.

11:20

Mr. Polsinelli: I think the confusion lies in the precise language of the bill in defining what a job group is and what a job rate is. You would apply the lowest job rate if you have two different types of groups and, if you have it, you are comparing secretaries to groundskeepers as a group and perhaps--give me another another example.

Dr. McAllister: Technicians.

Mr. Polsinelli: Technicians is another group. If you find the work the secretaries did was of equal value to both the groundskeepers and the technicians, then you would have to make a choice between the technicians and the groundskeepers to determine which of the two would be used as a comparison with the secretaries. At that point, subsection 5(2) would say you go to the groundskeepers because their job rate is lower than that of the technicians. Once you have identified which group you are going to be making the comparison with, then you do not necessarily take the lowest pay in that job group.

Ms. Ballantyne: Would you agree that the wage for the clerk-typist 3 was the representative job level? In our case, it is; most members work as clerk-typist 3. Do you take the top rate?

Dr. McAllister: Yes, the job rate.

Ms. Ballantyne: That would be \$10.37. Even if we look at the top rate for groundskeeper and we find a groundskeeper makes \$10.37; so we still have a question.

Dr. McAllister: You may find that, in fact, the groundskeeper is not the appropriate comparison. From what you have suggested, the female job is worth a lot more.

Ms. Ballantyne: We have looked at all the job classifications to determine that. We have been working on it for three years to try to find out what would be an appropriate job classification and that is the kind of comparison the university has made and we have made. I guess what this points to is, first of all, if we misunderstood, the legislation is not clear. It is certainly not clear at the local level to people like us who are going to have to implement it. It also seems to me that it may be interpreted in a number of different ways and it gets to the question of what does constitute a group, what does constitute highest and lowest wage rates? That is going to have to be determined.

We looked at what was in Bill 105 and we looked at how it would actually apply to our situation. Because the legislation does not spell out anywhere

that it would be unfair to not pay equal pay for work of equal value, we could get into a lot of individual situations--individuals who will not be covered by this legislation--because it speaks of generalities, not of individual situations.

Mr. Polsinelli: You may be right.

Ms. Ballantyne: Even going by your interpretation, I maintain that in 9-10 we have a number of classifications; groundskeeper is one and caretaker is another. If you looked at the job descriptions for groundskeeper 1 and groundskeeper 2, there are no differences. There are no differences between groundskeeper 1 and groundskeeper 2 as far as education requirements and as far as the operation of heavy equipment are concerned. It is the same job; and the legislation specifically says that where there are two, it is the lowest rate of pay. There is an implication in the legislation that it is going to be the highest-paid female with the lowest-paid male.

The problem is that a lot of women are not getting those top rates.

Mr. Polsinelli: You may be right in your interpretation in the sense that the legislation is difficult to understand, but it is difficult to understand because it is written in legal terminology. I think if you look through it section by section, definition by definition, a picture does emerge of it being understandable. However, that is not really the point. The larger point you make is that the legislation, as drafted, was never intended to apply to you. This legislation applies to the narrow public sector and that is where the intent of legislation is focused.

I am sure you are aware that the Attorney General (Mr. Scott) will be introducing another bill this session of the Legislature, covering the broader public sector, in which case you will be covered, and the private sector. Hopefully, that legislation will be more suited to your needs than this particular legislation is.

Ms. Ballantyne: I thought you might very well respond that way. We are not in a position to speak about the situation in the public service--we leave that to the unions that represent the public service employees--but I suspect the same kinds of problems exist in every place of public employment and even to a certain extent to the private sector. In bargaining units, whether they be public service or the larger public sector, white-collar workers have tended to be organized in similar ways. We have numerous job classifications and numerous steps we have to go through before we can get the top rate. I suspect that, although we are talking about how it will affect us, other unions might very well point out that similar problems exist in the public service.

Mr. Polsinelli: Those problems can be resolved. The mechanism is built in so that if those types of problems arise, they can be resolved. That is why we have the Pay Equity Commission; that is why there is a complaint-based system, and so on. In any event, I will leave it to Ms. Gigantes to carry on and defend the bill.

Mr. Chairman: Ms. Gigantes, you are next.

Ms. Gigantes: In spite of Mr. Polsinelli's kind words about how this bill all fits together and how one can get a picture and so on, when it gets to subsection 1(4) on page 4 of the bill, if you are into a choice of two



female groups of jobs which have the same number of employees and you are stumping around looking for your representative group under Bill 105, you have got to choose the one with the highest job rate.

That means any comparison you make is going to be of less benefit in terms of a change in compensation. I can certainly understand, in spite of the clarity with which Mr. Polsinelli reads the bill, there are people who actually sat down and have thought about the whole process on their own grounds with their own employer over a period of time, have looked very carefully at the bill and are going to end up with a feeling that they do not understand this process and if they do understand it, they do not like it.

I want to raise one question that has been sort of skirted here in a number of presentations and, as it has been, I have thought about what it means in terms of Bill 105 as writ, and that is the question of comparability of day care workers. We have two provincial day care operations, as I understand it, one here at Queen's Park and one in Kingston. I wonder whether you have any thought on how Bill 105 might apply to day care workers, if in the context of Bill 105, when we are looking for equal pay for work of equal value, how that would apply with provincial day care workers. Perhaps we could have some thought from the government or from staff on that. With whom would we compare provincial day care workers?

Dr. McAllister: Are you talking about day care workers currently covered by the bill?

Ms. Gigantes: Yes.

Dr. McAllister: If they are members of the bargaining unit--and I expect they are, although frankly I do not know that--they can be compared to any male job covered by the Ontario Public Service Employees Union.

Ms. Gigantes: I understand. Of course they can, but I am wondering if anybody had given any thought to whom they would likely be compared with.

Dr. McAllister: You mean a particular group?

Ms. Gigantes: Yes.

Dr. McAllister: No. I could not comment on that.

Ms. Kass: I am a day care worker. We have given a lot of thought to it, but we have not come up with any solution. Where we have grave concern is in the private day care centres where we would be excluded. We see ourselves, in fact, excluded from the legislation altogether, because often the day care centres are quite small and almost all female predominated. You might have one male cleaner, but often in that situation a male cleaner's wages are very low, too.

We are extremely worried about how day care workers will be affected by this legislation. In Ottawa-Carleton, we have gone through a process of unionizing private day care workers and catching up with our regional municipality counterpart. We have looked at it from a funding base, but many of the private day care workers receive public funds.

Therefore, I would see a comparison with our regional municipality and the Canadian Union of Public Employees Local 503. In CUPE 503's submission, it

compared day care workers with sewage operators and it meant a difference of about \$5 an hour. That is in their report. You can have a copy of that.

I would look again at some way of bringing in not only cross-bargaining unit but also cross-establishment comparison. I think that is going to be really important with female-dominated groups. I think nursing home workers would be another area where you will find nursing homes with almost all female employees and no way to compare themselves. So what do you do? You can do it when you are in an establishment where you can compare bargaining units but you are going to have serious problems with private day care workers. Their wages are very low out there and it is a female ghetto.

Ms. Gigantes: Were the wages controlled during wage restraint?

Ms. Kass: Oh, yes. They had no problem controlling us during wage restraint. We got it; boy, did we get it. Five per cent on \$8,000 a year is not a lot to live on.

Mr. Polsinelli: May I also point out, Ms. Gigantes, that what our witness presents is another reason this bill is inapplicable to the broader public sector.

Ms. Gigantes: OPSEU thinks it is applicable to the--

Mr. Polsinelli: In terms of the job comparisons and in terms of the civil service, we have many different types of jobs that day care workers could be compared to. As a matter of fact, they could be compared to any job, because once you have your pay equity plan, using the parameters of skill, effort, responsibility and working conditions, and anything else that is negotiated that should be taken into consideration, you can effectively compare any one group with any other group. What you point out is one of the reasons this particular piece of legislation would be inapplicable in your circumstances, because you would have no other group to compare with.

Ms. Kass: Okay, but we still are calling for this bill to be extended. I think there are going to be special provisions that must be made for women in predominantly female establishments who have nobody to compare themselves to. In the submissions to the green paper, we were stuck with the same problem. It looked as if we were going to be excluded--in fact, Ian Scott said we could be excluded for certain--from that legislation.

Mr. Polsinelli: We have not seen that bill yet.

Ms. Gigantes: I was looking for some reassurance that some of the items that have been raised here this morning would be addressed when and if we see such a bill. What I get is a sense that there has not been anything one can grasp yet about the approach the government may or may not intend. Thank you very much.

Ms. Kass: I think the Ontario division of CUPE has come up with a position on this, which we will also take a look at.

Mr. Partington: I have a short question. You have indicated the 23 per cent wage gap in the Ontario public service. How much of that 23 per cent do you see as being due to gender bias or gender discrimination?

Ms. Ballantyne: These figures were taken from the green paper. I do not know if the green paper resolved it.



Mr. Partington: I think it indicated five per cent. I wondered whether you had studied the figures.

Ms. Ballantyne: It is a really difficult question. They say, for instance, in the green paper there were issues that were separated from the gender bias issue, which I feel are integrated as part of the problem. For instance, when you talk about bargaining power, that is often determined by your gender. It is a difficult calculation to make.

Mr. Partington: Sure. Thank you.

Mr. Chairman: Any further questions from any members of the committee?

There being no further questions, I want to thank the delegation for bringing its views before us and for pointing out some of the concerns you have with the proposed legislation. As well, I would like to thank you for taking a rather lengthy trip down to be here with us today. I know it is a pleasant journey this time of year, but it still requires a sacrifice of time. Thank you very much, ladies, for being with us.

The committee is adjourned until two o'clock.

The committee recessed at 11:34 p.m.





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

WEDNESDAY, OCTOBER 8, 1986

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Smith, D. W. (Lambton L)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Substitutions:

Mitchell, R. C. (Carleton PC) for Mr. Villeneuve

South, L. (Frontenac-Addington L) for Mr. D. W. Smith

Wiseman, D. J. (Lanark PC) for Mr. O'Connor

Also taking part:

Gillies, P. A. (Brantford PC)

Clerk: Mellor, L.

Staff:

Ward, B., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy  
Minister, Labour Policy and Programs

Klein, S. S., Policy Adviser, Policy Branch, Labour Policy and Programs

Polsinelli, C., Parliamentary Assistant to the Minister of Labour  
(Yorkview L)

From the Ontario Progressive Conservative Association of Women:

Madigin, P., President

Wilkinson, M., Policy Chairman

From the Young Women's Christian Association of Metropolitan Toronto:

Campbell, E., Executive Director

Robson, L., Member, Social Action Committee

Emond, J., Member, Social Action Committee

From the Ontario Federation of Labour:

Pilkey, C., President

O'Flynn, S., Secretary-Treasurer

Griffin, J., Vice-President

Phillips, C., Vice-President



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, October 8, 1986

The committee resumed at 2:09 p.m. in committee room 1.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: Good afternoon, committee members. We will get started in an attempt to stay as close to our time schedule as possible, since we have a very heavy agenda for this afternoon.

We are very pleased to have as our first group this afternoon the Ontario Progressive Conservative Association of Women, represented by Patricia Madigin, who is the president, and Marianne Wilkinson, the policy chairman of the same group. I invite those two ladies to come forward.

Mr. Mitchell: This paid political announcement will be recognized.

Mr. Chairman: As soon as you are settled in and comfortable, we will be most pleased to hear your presentation. I know I speak for all members assembled.

ONTARIO PROGRESSIVE CONSERVATIVE ASSOCIATION OF WOMEN

Ms. Madigin: Thank you very much for giving us the opportunity to make this presentation today. I am Pat Madigin and I am president of the Ontario Progressive Conservative Association of Women. For those of you who may not be entirely familiar with us as a group, perhaps I can begin by telling you a little bit about us.

OPCAW is a component organization of the Progressive Conservative Party of Ontario. We represent the women of the PC Party in Ontario. All women who are affiliated with our party in any other group are considered to be members of our association also. We have between 50 and 60 affiliate organizations in the constituencies across Ontario and seven district organizations that we represent.

As well as our administrative and organizational functions, we function as an advocate group for women on issues that are of particular concern to women. As such, we have seen the need and supported the issue of pay equity, or what was called so many years ago when I first became involved in equal pay for work of equal value, for many years, as long as I have been in this organization.

Over those years, we have promoted the question of pay equity in many ways through forums, lobbying and presenting briefs to members of the government. The first summer I was part of the organization, in 1978, I remember coming to the then Minister of Labour to talk to him about equal pay for work of equal value. I think we have a background of interest and concern on this issue.

At this point, I would like to introduce to you Marianne Wilkinson. As Mr. Brandt said, she is policy chairman of our organization and she would like to make our presentation.

Mrs. Wilkinson: Our presentation is based on a resolution passed at our last annual meeting in April on pay equity. I believe there are copies to pass around. It is a fairly brief resolution, and I would like to take that and expand on the points it makes, so there is a good understanding of the issues we were addressing in that resolution. By the way, that conference was a joint one with the campus associations of the party; so there was a lot of input from the younger members of the party into the actual presentation and the discussion on this resolution.

The first point has to do with broadening the legislation. We feel it is very important to achieve pay equity. To start with the very narrow scope of the provincial government sector is not good enough. There is no reason at all why the broader public sector, including municipalities, school boards, universities, community colleges, hospitals and provincially funded agencies, such as children's aid societies and others of that nature, should not be included as well. They all receive large amounts of funding directly from the province. Some have other sources of funding as well. They all have the same problems of pay equity that you find within the direct civil service.

We do not see why the bill should be restrictive in that way. We strongly urge that, rather than taking a multi-step approach, which would be obviously quite time consuming and would mean that many would not even start to achieve pay equity for many years, the step should be taken now to broaden the bill so that those first steps are taken at the same time. There is no reason at all why this could not be done.

Certainly, any restraint bill that has ever been put forward included all those groups. I do not know why, when they have to share in restraint, they cannot also share in the benefits, why certain people should be deprived of their fair share of the economic return of their labour because you have not got around to putting it in the bill yet. That seems grossly unfair and not something we would expect from the government.

One person even equated it to slavery in the United States. People were saying that when slavery was abolished in the US, it would be economically disastrous for the southern states. It may have been, but that did mean it was right not to abolish slavery; and just because there are economic considerations that come out of pay equity, it does not mean it is not right to have it. You have to put right above economic considerations sometimes, and this is one of the times when it should be done.

The second point concerns the gender-predominated job categories. We feel the bill is overly complicated. When you start putting in percentages of this and percentages of that, of male-dominated and female-dominated--maybe we will have it-dominated some day; I am not sure--you are going to open up the finding of loopholes. Every one of us who has ever been involved in government knows that as soon as you have an act or bill, somebody finds loopholes. The more complicated the bill is, the more likely you are to find ways of getting around it.

I read in today's paper about a presentation yesterday when they talked about manipulating numbers back and forth. That is a genuine concern and could happen with some people, even in government. Governments are not immune from



doing strange things sometimes. I believe in the KISS principle, keep it simple, you know who. The bill is not simple; it is complicated. It is going to be administratively difficult. You read through that bill and try to figure out how this committee is going actually to monitor all these plans and to make sure they go and all the other things and who is going to count the people from day to day to see that it is done correctly, etc. Let us take the counting out of it.

If the pay equity principle is right, then it is right for everybody. What do you do if it is 69 per cent male-dominated and you cannot use that as a comparison and, therefore, nobody gets any catch-up in pay? Is that the way it is going to end up working? This is what we have concern about. If you have an employment place where you have 50:50 males and females, does that mean it stays exactly as it is? The bill could be interpreted that way. We do not see any reason why you have to have those percentages.

Why can you not just say you can use a classification system? There are lots of them around based upon skills, work conditions and other things. Every management consulting firm has them all sitting there. You can choose A, B, C or D plan, and they all work in their own fashion. They are subjective. None of them is perfect, but you can utilize them. Most places that now have classification systems use systems like that. They can be used whether there is one female in the organization or 90 per cent females, and you do not see any reason for distinguishing in numbers. We suggest you remove all those percentages and all the gender references and say equity is for everyone.

The third point has to do with how you make people do it and with noncompliance. There are time limits in the bill that have to do with the plans they have to start implementing, etc. There do not appear to be any good teeth to do anything about it if people just do not do it. There are no fines and no other kinds of penalties of any nature in there providing teeth to ensure that compliance is followed.

We feel there should be some system. It could be fines. People ask, "Should the government fine the government?" The government fines the government all the time. There are other ways. With other agencies, it is usually done by withholding transfer payments, "Either you follow the rules or you do not get your money." They seem to withhold transfer payments for lots of other reasons. This is a more legitimate reason than many others that are used.

There should be some teeth to ensure that it does not only say there will be pay equity, but also it says if you do not have it, there is a penalty for not following through. If you can pay parking tickets for staying too long in a parking place, surely you can have to pay a fine or something if you do not provide pay equity to female employees or to male employees, if it applies to them. We do consider this to be an equality bill, which applies or should apply equally to males and females. We are all people and should be treated as people.

The fourth point is the timing of the bill. Because of the time it always takes to have bills passed, there is a lot of merit in making it retroactive to the date it was introduced into the House or at the earliest other date possible. Waiting until it is actually passed means your two-year time clock starts from there, and that just means you are allowing government agencies and departments and, I hope, other agencies to defer making the commitments that we think should be made right now. Perhaps there should even

be some encouragement in the bill to have people go in sooner rather than later. There are no sweeteners there that might help to speed up the process. There are lots of limitations to ensure it does not cost too much, but nothing that seems to go the other way.

14:20

Those are the four basic points we had in our resolution last spring. We would like to make a couple of other observations in thinking about this general topic as well.

A paper has just been released on the Consultation Panel on Pay Equity on most of the private sector. In looking at that we note, of course, that this bill does not apply to the private sector. We support its applying to all people; that means the private and public sectors. The way you go about doing it in the private sector will probably have to be slightly different, and we can understand a two-phased approach--not three, but two. However, we do feel there should not be a major time lag. Once they have worked out how to do it in the public sector, you should move almost immediately into drafting and having the hearings, because that takes a long time, on a bill for the public sector, and it should not be put on the back shelf for years and years.

Regarding the economic considerations, whose economic considerations are you really looking at? Those of the individuals who are not being paid what they should be paid for the type of labour they are putting out, or those of the business that is actually riding on the backs of those people who are not being fairly paid? It is an issue that we do not think should be postponed, privately or publicly.

I can use as an example one that some of you coming from Metro Toronto will know very well, property tax reform, which is something I have been involved in for many years. Property tax reform has been avoided like the plague by the province for many years because it is very difficult to deal with, just as this issue is difficult to deal with. However, it means that many people are paying far more property tax than they should and many people are paying far less than they should.

Those paying less are now screaming because they do not want to pay more, but what about those who, for years, have been paying more than their fair share? It is not any different from women who have not been paid their fair share, and again it is an issue that needs to be dealt with and not postponed any more.

As I point out, it has been demonstrated in a number of jurisdictions that it does work and it is not really terribly expensive. The city of Toronto is probably one of the best local examples. They have worked on their own pilot project on pay equity and, to their surprise, found it was not terribly expensive, they were able to do it and it did not cause terrible problems. Australia is another example. There are lots of them around now. It is not that Ontario is leading in this. Ontario is, in fact, following, but in following, I suggest you should not follow some of the other places with all these percentages of this and percentages of that; you should go the whole hog and do it for everybody.

That is basically our presentation. We will be glad to answer questions to the best of our ability.



Mr. Chairman: All right. I am sure there will be questions from members.

Ms. Gigantes: Thank you for your presentation. I was interested, Ms. Madigin, when you began by saying you used to discuss the issue of equal pay for work of equal value and now everybody is talking about pay equity. I wonder whether it struck you that in Bill 105 we have defined equal pay for work of equal value into some Never Never Land and have narrowed down the whole discussion into something that is defined as pay equity, which means the result of things that are called pay equity plans built on percentages of people in groups.

Ms. Madigin: I do not think it is necessarily true that pay equity plans are built on percentages in groups. They are certainly built on comparisons of remuneration between groups, but I have not understood it as being a question of percentages.

Ms. Gigantes: So in your terms, we would be missing what you work for, which is equal pay for work of equal value.

Ms. Madigin: I am sorry, but I do not quite understand.

Ms. Gigantes: You talked about the issue of equal pay for work of equal value, which you have been concerned about for many years--as far back as 1978 in your own organization--but this bill seems to miss the point. Perhaps I am asking a rhetorical question.

Mrs. Wilkinson: We agree with you.

Ms. Madigin: We agree with you in the sense that we do not think it is broad enough and it does miss the point in those terms. If I might add, it misses the point in not having enough teeth to ensure that it will all come together.

I might mention three things, some of which have been hit upon by Marianne. First, for this bill to have teeth, it needs to have the sanctions she spoke of; second, I believe it should have ongoing monitoring to make certain there is no slippage and it is progressing as it should; third, it should be specified that it is discriminatory not to put this bill into practice.

Ms. Gigantes: I was going to ask about one of the suggestions you gave us about penalties, the withholding of transfer payments. While that sounds effective in one sense--the people who would be responsible in public sector organizations would care very much about whether provincial transfer payments were withheld--would we not run the risk of having the punishment meted out to the people in the organizations we are supposed to be serving if we ever had to apply such a penalty?

Mrs. Wilkinson: They have to meet their payroll normally in any case. I do not think they would not do that, but they might have to borrow temporarily, which costs money. I think the threat of it is enough to make them do it, as long as it is carried through. We may have to have one demonstration. If you say you are going to withhold it and people ignore it, you have to withhold it. I agree you would have to be careful.

I use that as one example, but there are different ways of dealing with it. Fines are one way, withholding, delaying or deferring transfer payments or

parts of them for certain types of projects are another. Sometimes it may be that you permit some of the transfer payments to go through for certain parts of their operations and withhold on other parts. I have seen it done in different ways for other things that are not as important as this.

Ms. Gigantes: Could you give us a couple of examples?

Mrs. Wilkinson: Of withholding of transfer payments?

Ms. Gigantes: Yes. We are aware of it at the federal level, having dealt with the Canada Health Act.

Mrs. Wilkinson: They did not pass it on in the doctors' situation. That is one case. I am trying to think of a good provincial example. I have heard of a few and I cannot remember the details. There have been more delays because they had not met certain conditions of filing certain papers or information. This type of thing has resulted in delays in getting the payment. If you did not meet the condition of filing certain information, then you would not get the money. This happens in the ones for special projects more than the general transfer payments.

Ms. Gigantes: I wonder too about the effect of penalties. I can see it in a private corporation, because obviously the owner has an interest in making sure there is no monetary penalty assessed. It comes out of the profits of the corporation or the firm. However, when you get to a public entity--let us take a childrens' aid society--do you fine the board or the executive director? Who do you penalize? You have a good deal of experience at the local level with these kinds of questions.

Mrs. Wilkinson: I do not think any board or local municipality will want to pay a fine. In most cases, they do not have big enough budgets as it is. If they could be assessed a fine of a significant amount if they do not do it and they do not have enough money already, they have to be awfully stupid not to comply. It would be one way of ensuring that the time limits are met. Particularly when you have boards that are largely voluntary, as many of the agencies are, they put off doing those things they can put off and do those that are more urgent or those for which they will be penalized if they do not do them. It makes pay equity become a higher priority with them, because they simply would not have the money for the fine.

14:30

In any case, fines are usually levied on some sort of systematic basis. I am not talking about going out to your agency and finding a ticket pinned on your front door. I do not think it will work that way. In these cases, usually you get back to them and you explain: "This is there. You can be fined this much if you do not do it. You have to get at it." That will work in 99 per cent of the cases.

Without those kinds of teeth, you go back and say: "You were supposed to have it in last week; it is not here yet. What are you going to do about it?" They say, "We have not got around to it yet; we will do it some day," and two weeks later it will be the same situation. You have no way of pushing them. People, boards and everybody else usually need to be pushed.

Ms. Gigantes: You probably have given some thought to it; can you tell us what the implementation of a better form of Bill 105 would mean in a municipality such as the one you know best?



Mrs. Wilkinson: We already have a job classification system for most of our employees anyway, so it would not be difficult. The major impact would be in cross-union calculations. For the inside workers, unionized and nonunionized, there already is basic equity in place, because there was an evaluation system done using all those criteria about three years ago.

Ms. Gigantes: Skill, effort, responsibility and working conditions?

Mrs. Wilkinson: Yes. It was based on those. There are four categories. We did a complete review less than three years ago.

Ms. Gigantes: It was based solely on that kind of job content?

Mrs. Wilkinson: There was a knowledge factor and education qualification level, but that is in this, too.

Ms. Gigantes: Skill was included.

Mrs. Wilkinson: Yes. It is one of those, but having used it to some extent, I also know it is very difficult to use. You should never underestimate that you are going to get complete pay equity. It is very difficult sometimes to fit a job exactly into each of those categories, so your numeric numbers can vary a little. It was a numeric one, and depending on the number of points you got, you went into a certain salary level.

The same thing has not been done with outside workers, though, and that is where the biggest problem will come in with municipalities. The outside workers traditionally are better paid than the inside workers. The working conditions are not very good for outside as compared to inside workers. I do not know whether that is sufficient to account for that, because we did not do that cross-comparison, which is required in this bill. With municipalities, I think you will find that is the biggest area where there will be some change. If you already have equity in the rest of it, that should not be too difficult to work with, because the cost of it should not be out of line.

I personally feel that municipalities or any other employers should be fair in how they pay their employees. That is something I argued for many years with my own colleagues and got quite a long way with, but not 100 per cent. You have to pay fairly. A woman working is no different from a man working in the results of their labour. There is more general acceptance of that today. It is even more prevalent now that the majority of women work.

Mr. Polsinelli: You introduced a form of pay equity in your municipality?

Mrs. Wilkinson: In all the inside jobs, yes. We did not call it that. We called it a complete reclassification/evaluation system using a nongender-oriented system.

Mr. Polsinelli: How retroactive was it? How far back did you take it?

Mrs. Wilkinson: To the beginning of the year in which it was introduced, which was about three years ago. It was effective immediately.

Mr. Polsinelli: How long did it take you to evaluate the positions?

Mrs. Wilkinson: We had a consulting firm in to work with us on it. The evaluation took about three months and implementing took about another

three months. It required certain positions being red-circled, by the way. I notice in your bill nobody can get paid less, but that is effectively red-circling. It is something you should be aware of. It happens. We had positions red-circled and that caused a fair amount of dissatisfaction among those employees, who were largely male.

Mr. Polsinelli: Were they red-circled because your evaluation determined that they were overpaid?

Mrs. Wilkinson: Yes.

Mr. Polsinelli: Once you had the system completely in effect, there was a six-month gap between the time you announced you would do it to the time you did it. Did you make a lump-sum payment or was the salary adjusted?

Mrs. Wilkinson: It was put into effect on a date that was a little retroactive and they were paid retroactive pay to that date. We brought it all in at once, because the cost was not exorbitant.

I do not think the system is perfect. I go back to the point that when you are doing these calculations--and the consultants went over them with me so I was aware of how they were doing it--there is a great deal of subjectivity. When you look at a position, you decide this position is worth 20 or 24 points for that. If you have four groups, which we had--just the most common systems--if you go three or four points wrong on each, you can be up to 12 to 15 points wrong at the end and that can mean a job category difference, maybe even two.

I do not think it is possible to completely get away from that, but as people get more used to using these systems and to evaluating, they will gradually improve. There will always be a level of subjectivity. I do not think there is anything to correct when you are comparing dissimilar jobs. Expectations should not be raised too high because of that.

Mr. Gillies: Thank you very much for your presentation. I was present at your convention back in April and so was familiar with the position the women's association would take. Can you elaborate on the private sector, how you see that coming about, your thoughts about it, and the discussion that has gone on within your association about that?

Mrs. Wilkinson: We have not had a great deal of in-depth discussion. We have discussed it more or less peripherally and on the basis of principles without getting into details of how it would be implemented, so we cannot give you too much help in the implementation aspect.

In principle, we feel that pay equity applies no matter where you are--private or public. Treating people fairly and equally is a basic human principle that we should follow. In introducing it into the private sector, with some of the things you have done in the public bill, such as the amounts of money you put into it each year to start correcting it, it may take some years to get it all the way through. There are ways that you could introduce it without the private sector really being unduly harmed. I think a lot of the crying wolf is simply crying wolf; they have not actually done an evaluation of their own business to see what the impact will be, but they do not like anybody else telling them how to pay their employees. I can understand that. Nobody likes being told how to run his business and that is effectively what you would be doing with this bill.



There are enough government regulations around right now and this is just one more. I do believe it should be a simple system, partly because the complicated bills you put out really hurt the small businesses the most. It is not because of what they have to do, but because of the people they have to hire to tell them how to do it. If you can keep it relatively simple so they do not have to pay enormous consulting fees and they can understand it, it will get easier and faster acceptance.

Mr. Gillies: Depending on your point of view, there are three groups that can be talked about in terms of pay equity, at least in the way the government has envisaged it: the narrow public services, the group that Bill 105 was originally thought to cover before the amendments came in; the broad public sector--municipalities, school boards, hospitals, etc.--and the private sector. In your opinion, where do the employees of the broad public sector more logically belong? Do they belong in the same bill with other government employees or in a bill with private sector employees?

Mrs. Wilkinson: It could be done in either, but they should be in the first. If you pass the one on the public service first, put them in there. If you do the private sector first, you can put them in there. I do not really think it matters where you put people as long as you achieve the principle of equity.

Mr. Gillies: In terms of the type of work, working conditions, job categories and any number of other things, would it not strike you that employees of municipalities and so on would more logically belong with other public sector employees as opposed to private sector employees?

Mrs. Wilkinson: Traditionally, they have been. From a practical point of view, the range of various public-type bodies is so broad that you can say a municipal hydro utility service is very similar to the work of a private electrical contractor who installs electrical systems outside. There are so many things that go back and forth that trying to categorize them is a waste of time. You should try to introduce equity that includes them as soon as possible and that is in this bill.

Mr. Gillies: Very good. Thank you very much for appearing today.

Ms. Fish: Mr. Gillies has explored the area I wanted to touch on in the private sector.

Mr. Chairman: There being no further questions, I would like to thank the Ontario Progressive Conservative Association of Women for its attendance this afternoon. It has been most helpful to us.

Ms. Madigin: Thank you for receiving us.

Mr. Chairman: The three o'clock group is not here yet. Should we take a five-minute break for the purpose of filling in the next 15 minutes or so until the next group arrives?

Mr. Gillies: Is it really going to be five minutes?

Mr. Chairman: Do you want to say 15 minutes, so you can make a phone call or whatever? It is all right with me. Let us say 15 minutes. We cannot start before the next group arrives anyway.

The committee recessed at 14:42 p.m.

14:59

Mr. Chairman: Mr. Polsinelli wants to make a comment.

Mr. Polsinelli: I would like table with the committee a response to a question asked by Ms. Fish in last week's session regarding complaints under section 26 of the act. I am sure all committee members have copies on their desks.

Mr. Chairman: The parliamentary assistant has circulated the response to that question.

We will now have the social action committee of the YWCA of Metropolitan Toronto. We would like to call the delegation forward. I understand there have been some name changes. The executive director, Ms. Ellen Campbell, is here with Ms. Lynn Robson and Ms. Jean Emond. Welcome to our committee deliberations. We appreciate your being here.

So you will have some indication of how we proceed, we will ask you to make your presentation. Having completed that, there will probably be questions from the members of the committee. We have approximately one hour to hear your group and whatever questions follow. Whenever you are comfortably seated and ready to go, you can start off. For the purposes of Hansard, perhaps you will introduce yourselves individually so that we know who is speaking at what point.

YWCA OF METROPOLITAN TORONTO

Ms. Campbell: I am Ellen Campbell, executive director.

Ms. Robson: I am Lynn Robson.

Ms. Emond: I am Jean Emond.

Mr. Chairman: Jean we have got to know quite well as a result of the spelling of her name. Again, may I extend a very warm welcome to you. We look forward to hearing your presentation. I believe we have most of the committee back now, so we can get started. I understand you do not have a written presentation. Is that correct?

Ms. Campbell: I am sorry. There has been some glitch in the system, because I thought we did have a written presentation. We will certainly have copies to you tomorrow. I will be changing my presentation. I had intended just to highlight the recommendations, but since you have not received the full brief, I will simply read it.

By way of introduction, I will say that the YWCA of Metropolitan Toronto has been working with employed women since its inception in 1873, providing housing services, education and counselling to women. There have been many changes in form as the changes in the needs of women have come about.

At present, we offer several programs enabling women to enter the work force or to improve their skills once they are in the work force. These are funded by local, provincial and federal governments and by the United Way.

From our experience with employed women, we have been active in advocating policies that eliminate barriers to women in the work place and that enable them to support themselves and frequently their families on an



adequate basis. Equal pay legislation is one tool for achieving this, and we have spoken many times regarding the proposals that both this government and the previous government have made to implement this approach.

I am pleased to be able to present the brief, which has been developed by members of our social action committee. Jean and Lynn will be handling most of the detailed questions afterwards. I would like to say that our technical adviser, a most skilled person in this particular area, is not able to be with us today, and so if there are questions that none of the three of us can answer, we will go back and provide responses in writing. I will read our brief to you, and we will go from there.

We welcome the Ontario government's stated commitment to implementing equal pay for work of equal value legislation for both public and private sector workers. We see Bill 105 as a first small step to achieving equal pay for work of equal value for all workers in Ontario. We anxiously await the next steps, including legislation to cover the extended public and private sectors. The YWCA believes the legislation must cover all employees and employers, including seasonal, full-time and part-time employees, large and small employers. Article 2 of Convention 100, the equal remuneration convention of the International Labour Organization, ratified by Canada in 1972, requires this.

Recommendation 1: The government must immediately table legislation to cover all employees and employers in Ontario.

Pay equity: The proactive model adopted in Bill 105 is a first step to achieving equal pay for work of equal value. It falls very short, however, of meeting the requirements of true equal value legislation. To achieve equal value, comparisons between all jobs and all classifications would be required, whereas the bill makes comparisons between a female representative job and the lowest male comparison job.

The YWCA, in its response to the green paper, supported the combination of a complaint-based approach with a proactive model to achieve the goal of equal pay for work of equal value.

Recommendation 2: Bill 105 should be amended to redefine "pay equity plan" in section 7 as a method to achieve equal pay for work of equal value. It should be defined as a proactive program to achieve a rate of pay for female-dominated jobs that is no less than the pay of male-dominated jobs of equal value in the same establishment.

Equal pay for work of equal value: At the end of all comparisons that are within bargaining units, nonbargaining units and across bargaining units, when the comprehensive pay equity plan has been implemented, it is unclear whether equal pay for work of equal value will be achieved. Nor does the bill state that it will be unlawful for the employer to fail to "ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value." This provision is required by Convention 100 and contained in federal and Quebec legislation.

Recommendation 3: Bill 105 must make it unlawful for the employer to pay less to female-dominated work than to male-dominated work of equal value.

Language and format of the bill: For people without legal training, large sections of Bill 105 are incomprehensible. For example, definitions such as "groups of jobs," "job level," "job rate" and "representative job level"

are vague and the average reader has great difficulty understanding how the plans and timetables of part III to part VI work. The convoluted language of Bill 105 must strike fear in the hearts of all private sector employers awaiting legislation for the private sector.

Recommendation 4: (1) The language of Bill 105 be simplified and clarified so that the legislation can be understood by all employees; (2) definitions be clear and precise; (3) part III to part VI plan be written in terms easy to understand.

Gender predominance: The title of the bill, its purpose and the approach it uses are limited to gender discrimination in predominantly female groups of jobs. Bill 105 sets a fixed numerical cutoff to designate male and female groups to be used for comparison purposes, 70 per cent and 60 per cent respectively. While the use of a negotiated fixed percentage could be acceptable as a first step, such a criterion becomes arbitrary and numerical cutoffs restrict individual rights. The use of fixed percentages is questionable, as they could be used to exclude women and men who deserve the right to file a complaint but who are excluded because of changing employment patterns. While the bill as drafted does allow for additional designations by agreement, how this works is unclear.

Recommendation 5: (1) The title and purpose of Bill 105 remove reference to gender predominance; (2) Bill 105 be amended to delete fixed gender predominance definitions. During the proactive phase, other factors, such as historical patterns and traditional sex stereotyping, should be considered in developing the pay equity plan. When equal value complaints are allowed, gender predominance should be decided on a case-by-case basis.

Exclusions: Section 8 states numerous exclusions, including trainees, students, rehabilitation positions, casuals and temporary labour shortages. The YWCA believes a minimum of exceptions should be allowed.

Trainee positions can be evaluated in the normal evaluative process; therefore, an exception for training positions is unnecessary. Equal pay for work of equal value must be a right of all Ontario employees, including students. Quebec legislation does not allow discrimination in the employment of students.

Bill 105 fails to provide a definition for "casual position" and is unclear on whether hundreds of GO Temp employees utilized in the temporary employment program are covered.

Temporary labour shortage is also problematic and an administrative nightmare. Who determined when there is a labour shortage? What amount is allowable for a labour shortage? What happens when there is no longer a shortage? These questions are impossible to answer in an equitable manner.

Recommendation 6: Bill 105 should be amended to delete section 8.

Pay adjustment method: The YWCA questions the methodology suggested in the bill, as it will not achieve the goal of equal pay for work of equal value. Section 5 is of particular concern. Pay adjustments for women must be for minimal amounts under the definition of "pay equity" set out in subsection 5(2), where the job rate for the representative female job level is "at least as great as the male group with the lowest rate."



Subsection 5(4) states, "...differences in rate of compensation between job levels in predominantly male groups of jobs of equal or comparable value shall be deemed not to reflect gender bias." This limits the rights of women to make an equal value complaint and, because women's pay is adjusted to the lowest male level, women are prevented from citing another comparison group.

Recommendation 7: The method of wage adjustment should not be codified as the lowest comparable job rate and subsection 5(4) should be deleted as it limits equal value complaints.

Comparisons made: The pay adjustment method suggested in clause 7(d) and subsection 5(1) assumes the groups of jobs and levels of jobs established by existing job evaluation systems are appropriate. However, it is likely that with a classification system developed in the 1960s to which few amendments have been made, the groupings and levels reflect outdated standards. Do these standards consider the impact of technology, changes in organization, programs provided and program delivery? I might note that we have been revising our own job classification system, which is 10 years old. It took a joint union-management committee about six months to redefine the appropriate factors given changes in our organization and changes in the kinds of staff we hire.

Prior to utilizing the outdated classification structure for a new equity plan, it is appropriate to update the standards. The existing classification systems must be examined to ensure that they do not discriminate against groups of jobs. One method is to evaluate all jobs in the Ontario public service using a universal, gender-neutral job evaluation plan.

Recommendation 8: The standards which have brought about existing job groups and job levels should be updated prior to the implementation of any pay equity plan.

Timing: The YWCA wishes to express concern that under the current wording of Bill 105, money from final pay adjustments may not get into women's pockets until the mid-1990s. Employers are not required to make the initial pay-equity adjustment until approximately two years after the bill is proclaimed. Adjustments under parts V and IV are tied to the last payment in all earlier plans; clauses 11(3)(c) and (d).

There are provisions in the bill for permitting an extension of time for filing plans and paying adjustments; clause 19(2)(m). With such provisions, the final adjustments under Bill 105 could take up to six years, which is an unreasonable delay to working women, who for too long have felt the effects of discrimination in the amount of their pay cheques.

Recommendation 9: Bill 105 should provide for immediate adjustments and retroactivity should be tied to the date of proclamation of the bill.

Employee rights: As it stands, Bill 105 does not include protection from employer reprisal for employees who negotiate plans, complain to the commission or testify at a hearing. Neither is there any provision for mandatory disclosure of information to enable employees to make equal value comparisons. Under the Manitoba legislation, employers are required to "disclose to the bargaining agents and the employee's representatives affected information in its possession or control relevant to the implementation of pay equity."

Employees must be protected and have access to information about their

jobs and about all pay-equity plans. The public should also have the right to general information about all pay-equity plans. Pay-equity plans should be posted in the work place.

Recommendation 10: Bill 105 should be amended to protect employees from reprisals, to include a provision for mandatory disclosure of information to employees and to include a requirement to post all pay-equity plans in the work place.

Complaints: Section 25 establishes what an individual employee may complain about when he or she may make that complaint. There does not appear to be provision for a third-party complaint in the legislation, nor is there an absolute right to a hearing. Also, it is not certain that once implementation has been adopted, the individual employee would be able to complain about being paid less than a male employee whose work is of comparable value.

Recommendation 11: (1) Bill 105 should be amended to delete specific references to types of complaints and time limits; (2) provision be made for third-party complaints; (3) subsection 18(6) be amended to delete the powers to the commission to dispense with a hearing; (4) once a pay equity plan has been fully implemented, an employee or her representative be able to file a complaint: (a) that the compensation system being used by the employer is gender-biased, or (b) that a female-dominated job is being paid less than a male-dominated job of comparable value.

Coverage: The bill should be extended immediately to cover all public sector employees, including those in crown agencies, school boards, universities, hospitals, colleges, municipalities and other agencies receiving funding from the public purse. Coverage should also include all workers who were covered under wage restraint laws. Special pay equity funds should be transferred to these agencies to raise the salaries of undervalued employees. Manitoba's legislation includes the broader public sector.

Recommendation 12: Bill 105 should be extended to cover all public sector workers who were covered by the 1983 wage restraint laws.

In conclusion, Bill 105 is a first small step towards pay equity, but without substantial amendments, it will not provide for equal pay for work of equal value to women in the Ontario public service.

A small number of women of Ontario are covered by this legislation, and the YWCA of Metropolitan Toronto welcomes this first draft bill to implement pay equity, believing that with amendments and extension in coverage, substantial numbers of employed women will achieve the concrete benefit of increased wages. Thank you very much.

Mr. Chairman: Are there any further comments from the balance of your delegation?

We can move on to questions from the members of the committee.

Ms. Gigantes: Thank you for your presentation. I confess there were parts I did not follow properly because I could not absorb them fast enough. I look forward to getting your written brief. In the meantime, I would like to ask a couple of general points.

On your recommendation 4, in which you call for a simplification and



clarification of language, particularly in parts III to VI, is it your intent in suggesting we do that simply to make the process clearer in parts III to VI? Let me put it this way: George Orwell said one always has difficulty expressing something in good English if one has not thought it through clearly. I am wondering whether that is the problem with parts III to VI.

Ms. Emond: It think it is both. It is hard to understand, as a layperson, but perhaps it is hard for the legal minds to get their minds around it too.

Ms. Gigantes: We may be looking at a structural problem as well as a problem of language.

Ms. Emond: Yes.

Ms. Gigantes: When you talked about equal pay complaints as opposed to complaints about the pay equity system or the formation of plans, you suggested that we should forget about gender predominance and look at the merits of the case. I think you also call for us to eliminate or delete subsection 5(4). Is your intent here to open up equal pay complaints, even between groups which are mostly men? We have had some delegations suggest that we should be looking at an amendment to that effect.

Ms. Emond: I think if the men start seeing that there are levels where, say, they are valued at 100 points and are paid \$8, and there are a couple of other groups valued at 100 points, one being paid \$12 and the other \$20, those men are going to be as upset as the 100-point women, who have to be valued at \$8 also. If we are ever going to achieve true equal value, it has to be opened up across the board, not just in the gender-predominant jobs. We were definitely trying to make that point.

15:20

Ms. Gigantes: I was both taking notes and trying to write questions and I got a little confused when I looked at my notes; forgive me.

Ms. Emond: I can clarify that in writing if it would be helpful.

Ms. Gigantes: That would be helpful. You also mentioned that you had recently installed a new classification system in your own work place.

Ms. Campbell: We adopted a job classification system in 1975 based on skills, experience and responsibility. We have used that in assessing positions within our own organization. Because we are predominantly a women's organization, we were not looking at discrimination against women; we were looking at a system that is fairer to all levels of staff.

In the 10 years that have passed since that time, there have been changes in the services we offer and therefore in the kind of staff we hire. We also recognize that in the first system, we did not sufficiently recognize the skills and responsibilities of clerical and maintenance staff. Both our union and management felt it was time to look at that again. It has been an interesting process. We have just introduced this to our staff and we are in the process of working towards implementation. It is a subject for negotiation as our collective agreement is worked out. It has not been adopted totally but we have had a system that is essentially an equal value system since the middle 1970s.

Ms. Gigantes: Not broken down by skill, effort, responsibility, working conditions, but skill, experience and responsibility.

Ms. Campbell: I am sorry. There is also a working situation category.

Ms. Gigantes: When you went to re-evaluate your system, did you find that large changes needed to be made?

Ms. Campbell: There have been changes in the factoring system. I do not imagine there will be major changes in the distribution of jobs. There will be some jobs that will move up and there may be some jobs that will move down. We added some factors that would more clearly reflect the importance to the organization of support work.

Ms. Gigantes: When you say that some jobs will move down, does that mean the people who hold those jobs will lose pay?

Ms. Campbell: That is a subject for negotiation. The way in which we implement that will be subject to negotiation. I am not able to make any statements about how we will deal with that.

Ms. Gigantes: Do you deal with one union in the work place?

Ms. Campbell: Yes.

Ms. Gigantes: Thank you very much.

Mr. Gillies: I have just one question initially. Were your employees captured under the restraint program?

Ms. Campbell: No.

Mr. Gillies: They were not. For all intents and purposes, the Y is a private sector organization.

Ms. Campbell: Yes.

Mr. Gillies: Thank you.

Mr. Chairman: If there are no questions from the committee, I have a question. Part of the thrust of your presentation was to expand the bill to incorporate in it all the groups that were under the restraint guidelines of the previous government and also to include pretty well all government-funded organizations. I may have missed this when I was out of the room for a moment. Did you address the private sector in your remarks with respect to the expansion of the intent of the legislation?

Ms. Campbell: Our ultimate goal is equal value for all the workers of Ontario.

Mr. Chairman: Did you comment on that?

Ms. Emond: We did a brief on the green paper and we can send you a copy of it.

Mr. Chairman: But not in your presentation today.

Ms. Emond: No, we did not speak to it today.

Mr. Chairman: Can you elaborate at the moment on your position on that for the benefit of myself and committee? Was it your intent in your



earlier comments on this question that the entire bill at this point be enlarged to incorporate both the public and the private sectors or did you suggest a phase-in period? How would you suggest that be handled?

Ms. Emond: We have not made any suggestions around those issues in this paper. Originally, a year or so ago, we thought it would be wonderful to see everything covered in one bill. That has not come about, so we called for the inclusion of all private sector workers in our private sector brief and we are now calling for the inclusion of all public sector workers. Generally, we are calling for all workers in Ontario to be covered.

Mr. Polsinelli: I am curious about whether our deputants have received copies of the government amendments that have been tabled.

Ms. Emond: I did yesterday. I have gone through them and some of them speak to some of our issues about access to information and reprisals.

Mr. Polsinelli: Exactly.

Ms. Emond: I think there are a couple of others that I have no notes on, but I have seen some of them.

Mr. Polsinelli: Thank you.

Mr. Chairman: There being no further questions, I would again like to thank you for your presentation. It will be helpful as we review the legislation and look for amendments that may make the bill more workable. That is the intent of the committee's deliberations. Your time and efforts before us this afternoon are much appreciated by all members of the committee.

Ms. Campbell: Thank you very much.

Mr. Chairman: We can take a brief break. I do not see any reason we should not take half an hour, if that is the case. We have Mr. Pilkey and Mr. O'Flynn coming in.

Mr. Charlton: They are in the building.

Mr. Chairman: I am sure they will want to get started as soon as they arrive. Why not get back a few minutes before four o'clock?

Mr. Charlton: They are in the building. They trampled me when I was going down the hall.

Mr. Chairman: If Mr. Pilkey is in the building, we will be able to hear him shortly.

The committee recessed at 3:28 p.m.

15:56

Mr. Chairman: Members of the committee, I believe it is time for us to get under way again. We are pleased this afternoon to have as a delegation before us Clifford Pilkey, president of the Ontario Federation of Labour, and the secretary-treasurer, Sean O'Flynn. Perhaps Mr. Pilkey will introduce his other guests to us so that we will know who make up the delegation on behalf of the OFL. Once having done that, sir, you can begin your presentation. So that you understand the format, following your presentation, there will, in all probability, be some modest questions from the members of the committee.

## ONTARIO FEDERATION OF LABOUR

Mr. Pilkey: I certainly appreciate the "modest question" part of it. On my left, although not necessarily philosophically, are Julie Griffin and Carol Phillips, both vice-presidents of the Ontario Federation of Labour. The remainder, whom I will leave nameless for a moment, are the backup. If it is too difficult for us, we will move them in. We have two teams here today.

I want to make a few brief comments and then I am going to ask Julie Griffin to deal with our submission. First of all, we appreciate the opportunity of making this submission to this legislative committee studying Bill 105. We happen to believe that the Ontario government's proposed pay equity law falls far short of what we believe a pay equity act should look like for Ontario.

First of all, it is our understanding that this bill covers only about 29,000 employees of the provincial government and we think that is totally inadequate. This group represents a small portion of the public sector women in Ontario. It certainly falls far short of achieving equal pay for work of equal value. We want to talk about that. I am sure Ms. Griffin will refer to that as she goes through the submission.

We happen to believe that a pay equity act in Ontario, if it is covering the public sector, should cover them all. In any event, it is labour's position that we ought to have had a piece of legislation that covers not only the public sector but the private sector as well. So we are a little disappointed--and that, I suppose, is a kind statement--in the legislation. I am confident that Ms. Griffin will refer to those sections that fall short of what we consider relevant legislation here in Ontario to correct a situation that has been going on for too many years, and that situation is where women are shortchanged, if I can use that term, in relation to the financial remuneration for the tasks they are asked to perform on behalf of their employers, whether in the public or private sector.

Ms. Griffin: As Cliff has said, the Ontario Federation of Labour has been a long-time advocate of equal pay for work of equal value. For more than a decade we have presented briefs to government, held public forums, conducted union educationals and sought equal pay measures at the collective bargaining table.

Most recently, we have appointed our own alternate panelists to track the government's all-business panel across the province to receive public submissions on pay equity. We will be submitting our report of those eight hearings to you a little later today. Unfortunately, they did not get here at the same time as the rest of us. When it does arrive, we would urge you to read it, to get a clear sense of the public mandate on the key implementation issues in equal pay for work of equal value.

We have also tabled with this committee a copy of the brief that the OFL made to the green paper consultation process. At the back of it you will find the OFL model pay equity act, which was drafted through one of the most extensive consultation processes undertaken by the federation. Again, we believe it will provide assistance to this committee as you proceed to revise and improve Bill 105. We support the Liberal government's stated commitment to legislate equal pay for work of equal value. We support the fact that commitment was made firm through the NDP-Liberal accord in 1985. However, here we are a year and a half later, still waiting for this commitment to become a reality. We are here today in good faith that there will be no more option



plans, discussion papers or consultation panels, but rather that equal pay for work of equal value will become a reality for all of Ontario's working women, both public and private sector.

The Ontario Federation of Labour is an active member of the Equal Pay Coalition and we have participated in the discussion and consensus building that went into the coalition's response to Bill 105, which I believe was presented to you earlier, and we support the detailed analysis and recommendations that the coalition has presented to you. We are not going to repeat that brief today, although we have appended to our brief their list of recommendations.

We would like to use our report on the Ontario government public hearings on pay equity as the basis for our presentation today. Many of the principles and implementation ideas in the recommendations in that report have direct application to Bill 105, and this is a fact that reinforces our long-standing position that all workers should be covered by one piece of equal pay legislation.

Second, many people spoke specifically to Bill 105 at those hearings, and since this committee is not travelling to those communities nor is the green paper panel making its recommendations public, we believe it is important to lay out what was recommended at those hearings. Rarely has the public spoken so clearly and we would ask you to heed the strong public mandate in amending and legislating Bill 105.

The first point we want to make is on application. The pay equity legislation should apply to all employers regardless of size and all workers, including part-time, casual and trainees, and the stated objective of the law should be to achieve equal pay for work of equal value. We have made clear our support for one equal pay law for all, as is the case in minimum wage laws, human rights laws and health and safety laws. However, since this government has been completely unmoving on this issue, we believe at the very least Bill 105 should be extended to all of the public sector, the same public sector that had to forgo wages under the 1982 Inflation Restraint Act. This includes workers such as those in schools, hospitals, municipalities, homes for the aged and community colleges. As Cliff indicated in his opening remarks, Bill 105 as it sits currently will affect only something around 29,000 workers, about one tenth of the public sector. We believe this is unjust.

Bill 105 in its present state also proposes to exclude trainees, students, rehabilitation positions, temporary labour shortages, GO Temps and casuals. Again, we find this unacceptable. Bill 105 should be amended to delete all of these artificial exclusions and to make the law universally applicable.

Another major criticism we have of Bill 105 is that it does not state as its objective that the law should be to achieve equal pay for work of equal value. During the green paper hearings, a full 115 briefs supported the inclusion of equal value as an objective of the law.

Pay equity is a method of reducing the wage discrimination women face. Equal pay for work of equal value, which is what we want, seeks to eliminate it altogether. Only by including equal pay for work of equal value as the objective of the law, will working women in this province really have access to full justice and fair wages.

Our second point deals with complaints mechanisms. The programs must be

backed up with complaints mechanisms. Pay equity should have an integrated model requiring proactive pay equity programs, combined with a strong ongoing complaints mechanism. While Bill 105 has good intentions, we feel the methods it proposes are impractical. It provides for proactive programs, but makes them unnecessarily complex and excessively expensive. Parts III, IV, V and VI of the bill require the development of a plan, the evaluation and slotting over and over again of the same women, first within the bargaining unit, then across the unit and then across the establishment.

We believe this method is an administrative nightmare and will double, if not triple, administrative costs, as well as prolong the implementation time. We believe it would be far better to simplify the program stages and direct those administrative dollars where they are most needed, that is, to the women themselves.

We believe there should be one program developed establishment-wide and that these programs should be negotiated to reflect and respect the historical bargaining structures of the unions involved and that no one evaluation system should be imposed by the law. With a strong objective in the law to achieve equal value and firm time limits in which to do this, the programs will be more effective and more efficient.

With respect to the complaints mechanism, there is little protection for public sector women in Bill 105. There is an extremely limited role for workers and their unions. It is restricted severely in timing and in areas that can be complained about. For the individual, it means that at no time can she complain that her wages are less than a male co-worker who performs work of equal or comparable value. Bill 105 must provide for such a complaint mechanism to ensure that there is a safety net for women.

The Ontario Federation of Labour report reflects that many briefs recommended that individuals, unions, union organizations and third parties should have the right to complain and there should be a right to a hearing on equal pay for work of equal value. Even in its newest amendments, the government has refused to entrench the right to a hearing. This right is fundamental to the complaint process. It is also important to require the pay equity program to be posted in the work place, as well as posting workers' rights under the law, including a worker's right to complain. Bill 105 should be amended to incorporate these rights.

Unions must also have greater access to the complaints mechanism to ensure that each stage of the program meets the goals of the law. At any time during the drafting and implementation of the pay equity plan, the worker or her or his union representative should have the right to complain, first to the employer-union committee, then, if need be, to the commission. It is equally essential that these complaints are dealt with quickly and that they do not hold up the negotiations or implementation of a pay equity plan.

With regard to the role of the unions, we believe the law should mandate a strong collective bargaining role with worker, union and employer participation and should allow for a cross-bargaining unit and nonunion job comparisons.

It was here that during the public hearings some of the clearest consensus was heard. Of the briefs, 151 called for a strong collective bargaining role, while 130 of them spoke in favour of a cross-bargaining unit and union-nonunion job comparisons. A strong collective bargaining role must be allowed in all stages of implementation of Bill 105.



We recommend that parts III to VI of Bill 105 should be collapsed and replaced with a section which says, "In organized work places, the employer and all union representatives in the establishment are required to negotiate a single pay equity plan within three months from the date of proclamation and to implement it in the next 18 months."

All details of the implementation strategy are to be negotiated between the employer and the union or unions concerned, subject to approval of the Pay Equity Commission. This would mean the deletion of such arbitrary restrictions in the law as the requirement that women's job groups be compared to the lowest-paid comparable male groups. Surely, mutual agreement by the union and the employer is a more constructive approach to defining comparison groups.

16:10

Similarly, the new Liberal amendment under subsection 11(7a), which dictates the allocation in each year of compensation, should be left to negotiation. The government's amendments require that women earning the least receive the least each year. A union may well decide that the priority should be for the women at the bottom to receive the most, since they are suffering the most from the underrating of their wages. The union should have the right to negotiate this.

By allowing for full union participation at all stages and allowing pay equity programs to address all jobs in an establishment, including management jobs, we will have greater assurance that women's jobs will be properly valued and compensated. To exclude management jobs gives employers unnecessary temptation to redefine jobs out of the bargaining unit to avoid negotiated pay equity comparisons. To afford unions only a consultative role in establishment-wide programs sets up a work place for possible unfairness and future complaints.

Where no union exists, the program should be employer initiated and filed with the commission for approval, with individuals and third parties having access to all information, complaint and enforcement procedures.

There must be a separate pay equity fund with a specific percentage of payroll to be set aside by each employer each year for pay equity adjustments.

While we applaud the government's attempt to propose a pay equity fund, we believe one per cent is an insufficient amount to set aside. That will guarantee that working women will not have pay equity for years, if ever. The majority of presenters to the public hearings called for three per cent of payroll, an amount we endorsed in our model pay equity legislation. We believe this to be a more realistic percentage that would assist in putting more money sooner into women's hands.

It is equally important to define the three per cent in terms of the entire payroll, something Bill 105 does not do. By segregating the management payroll, the women at the bottom end of the wage scale do not have access to the largest pot of money, the three per cent of higher management salaries. Bill 105 must be amended to require an employer to establish a pay equity fund equal to three per cent of total establishment payroll per year.

We also believe it is critically important to separate this fund from the general wage package and to negotiate it separately from the general wage increase. This guarantees the effectiveness of the pay equity program and also recognizes and respects the ongoing collective bargaining process.

We are seeking a separate pay equity agency or tribunal to be established to monitor compliance with and enforcement of the act. It must have the resources and expertise to approve pay equity programs, to assist employers and employees to implement these programs and to undertake an active public education role. The pay equity agency should monitor implementation, initiate pay equity investigations and complaints and prosecute violators.

There was virtually no opposition to these recommendations at the public hearings. Even the business community, which expressed scepticism at introducing equal pay laws, made recommendations for a separate commission. Bill 105 should be amended to entrench the function, powers and mandate of the commission suggested at the public hearings and reflected in our recommendation.

With regard to access to information, employees, unions and the pay equity agency should have full access to information on wage rates and practices.

This is one of the more serious failings of Bill 105. It does not provide for full access by workers and their unions to information on such things as job descriptions, wage rates and other data essential for implementation of pay equity programs. There should be a clause in Bill 105 which requires that the employers provide all the relevant data to the workers and their bargaining agents, including such things as job descriptions and rates of pay of both the excluded and management compensation plans.

The recently proposed Liberal amendments do not begin to address the question of full access to information. We believe the requirement to file audits "no later than the time of the first pay adjustment" is too little far too late.

The government's attempts to remove "person" from the very limited access to information under subsection 19(3) is an attempt to wipe out any chance of a third-party investigation or complaint which is absolutely critical for unorganized women who do not have a union to protect them. Similarly, the requirement to file an annual report means nothing unless the information is accessible to all and the progress of pay equity programs is assessed by some standard. We suggest the equal value standard.

Pay equity legislation should include tough enforcement measures through fines and/or penalties. Contract compliance should be one of the enforcement mechanisms. A law is only as good as its ability to be enforced; yet in its present form, Bill 105 provides one of the weakest enforcement mechanisms. Subsection 21(1) allows the commission's decision to be filed with the Supreme Court, a long, unwieldy, costly and fairly ineffective process.

Bill 105 has no other section to deal with offences, unlike almost all other major pieces of legislation, such as the Ontario Labour Relations Act. In order for Bill 105 to be implemented properly, it must provide for substantial fines for noncompliance.

The Ontario Federation of Labour model pay equity bill, however, goes one step further than the Equal Pay Coalition does. We recommend the French model, which includes imprisonment up to one year in addition to substantial fines. Women in Ontario must have insurance that the new law will be enforced effectively. Such teeth in the legislation will help ensure that all parties will work effectively to implement equal pay for work of equal value.



I see our report has arrived, the one I referred to earlier. All of the definitions and recommendations I am making flow from that report.

Definition of pay: Pay should be defined as total compensation, including pay benefits and perquisites. The OFL supports the Bill 105 definition of payroll in section 1 and subsection 11(9) as all compensation payable to an employee, including benefits. As was pointed out to the government hearing, in a brief on behalf of 17,000 Canada Auto Workers retirees, employee benefits constitute a large and growing proportion of the total compensation package. By 1982, this figure had increased to 32.7 per cent of gross payroll. We have argued for a broad definition of compensation in pay equity legislation so that it recognizes that employee benefits are an integral part of the compensation package and these must be equalized to achieve the goal of true equality.

Establishments should be defined as the corporate employer, as defined in the Ontario Labour Relations Act, with the provision for franchises to be included under one employer. In addition, the law should provide for cross-establishment comparisons in special cases where there are no male wage comparison groups.

We believe this recommendation speaks for itself. It reinforces the need for government to recognize existing corporate structures and existing bargaining structures. For example, 140 hospitals in Ontario centrally bargain with the Canadian Union of Public Employees, the Ontario Nurses' Association and other unions. It seems only appropriate that the definition of "establishment" should reflect that history of labour relations.

It is also critical for the government to build in a measure for workers in traditionally female occupations where there are no male groups for wage comparison. Day care workers are one such example and nursing home employees are another. Their work is undervalued and underpaid. There are virtually no male jobs in their work places. Provision should be made to apply to the commission to seek special comparisons. It is important that the legislation build in measures which are sensitive to these types of work places.

We also do not want to see the male workers penalized, so red-circling and wage reductions should be prohibited as a method for compliance with pay equity laws.

Bill 105 has taken a half-step in this regard. It guarantees no wage reductions; yet it neglects to guarantee that men's wages will not be held back to allow women to achieve fair wages. Unless the new law prohibits red-circling, we believe there will be many cases where men's wages may be frozen until women reach the equivalent. In effect, we would have men paying for wage equity, not the employer. Section 9 of the bill must be amended to prevent this by prohibiting the freezing or red-circling of or otherwise affecting male-dominated wages as a result of pay equity adjustments.

There should be retroactivity of pay adjustments to the date of introduction of the pay equity legislation.

Bill 105 fails to provide for retroactive payments to women, despite the fact that the government promised equal pay laws a year and a half ago and introduced this legislation almost eight months ago. It is essential to build in retroactivity to ensure that employers do not needlessly delay the legislation or delay the implementation process, and to give women some confidence that historical wage inequities will be corrected quickly.

We believe there are other examples where the government has backdated legislation prior to proclamation date, the Family Law Reform Act of 1986 being a good example of this. Our recommendation, therefore, is that Bill 105 be retroactive to February 11, 1986, the date of the bill's first reading.

16:20

On the question of gender predominance, our recommendation is that female and male predominance for purposes of proactive programs should be negotiated between the employers and unions on the basis of factors such as historical patterns. This gender predominance should not be rigidly specified with a cutoff number or percentage in the legislation.

Bill 105 currently proposes an arbitrary and artificial cutoff of male- and female-dominated groups of 70 per cent and 60 per cent, respectively. These clauses are completely contrary to recommendations made by more than 130 submissions across the province at the public hearings. Over and over again the government panel heard that such arbitrary cutoffs would act as a guillotine, cutting women off from access to pay equity. In Ottawa, Elizabeth Miller of the Public Service Alliance of Canada, which has had extensive dealings with the federal equal pay law, pointed out that a 70 per cent cutoff would have meant that not a single one of their successful equal pay complaints could have gone forward.

We are, therefore, recommending that Bill 105 be amended to delete the fixed numerical gender predominance guidelines and instead allow for a flexible test to be negotiated by unions and employers and to include such things as the number of women in a position or category, the historical and geographic trends, sex stereotyping and other factors that may have contributed to an undervaluing of women's work.

Contracting out for purposes of avoiding compliance with pay equity should be strictly prohibited. An amendment to Bill 105 to reflect this is particularly critical when the bill is amended, as we hope it will be, to include the extended public sector. The tendency of employers in nursing homes, for example, to contract out work to bypass union-negotiated wage rates and to maximize their profits has been an increasingly common practice in Ontario. A clause prohibiting contracting out to avoid compliance with Bill 105 would provide much-needed protection for women.

With regard to the question of protection from reprisals, it is here that Bill 105 has one of its greatest failings. As long as there have been labour relations, employers have sought to punish workers for attempting to have laws complied with. Protection against reprisal must be a basic tenet of the law.

The federation's model equal pay law proposes the following: There should be no reprisals due to efforts by an individual or group to seek pay equity. The onus shall be on the employer to establish that a dismissal or change in working conditions is not a reprisal due to efforts to enforce the pay equity law. A complaint of reprisal will be referred to a pay equity board, and where reprisal is established by the board, the employee or employees shall have full rights to compensation for wages and benefits lost and full rights to reinstatement in the job held before the act of reprisal. The employer shall bear the full cost of such compensation.

The government's recent amendment starts to build in a reprisal section under section 20a, but it ignores the standard protection built into Ontario



statutes, and that is the reverse onus provision, which takes the burden off the individual. We believe this committee would be well advised to adopt the OFL amendment, which is stronger protection. It is in keeping with other Ontario labour legislation and with the goal of justice and maximum protection for Ontario's working women.

Finally, we point out that the report on the government's public hearings highlights extensive recommendations made that addressed the need for such things as the accompanying affirmative action legislation, more accessible child care and substantially improved minimum wage laws. We cannot pass up an opportunity to reinforce this to you as our legislators. We urge the government to bring in a full package of economic equality measures to accompany equal pay for work of equal value laws.

Our greatest concern about Bill 105 is the length of time it will take to put money into women's pockets. Even initial pay adjustments will start at least two years after the bill is proclaimed law. This unnecessarily deprives women of much-needed income to help pay their rent and put food on their tables. Therefore, though it was not originally in the OFL model equal pay law, we support the idea of amending Bill 105 to include some immediate payments--rough justice, as it is being called.

How we see this working is that the union and the employer would, upon proclamation of the law, negotiate a formula for immediate adjustment to all workers in female-dominated work. That adjustment would be paid within three months as a lump sum that would increase the yearly salary paid to women. The pay equity fund, which should have been accumulating since first reading of the bill, would be used to fund the rough justice.

This formula would allow women who most desperately need the money to be paid the most the quickest. Where there is no union, the employer would have to develop and implement the payout, with employee rights to complain to the commission.

Now we come to the question of how we will fund pay adjustments in the public sector. In our model pay equity, we propose that this act ensure that moneys paid through pay equity programs to municipalities, school boards and other public agencies shall be incorporated into the funding mechanism of the province. We believe it is critical when legislating equal pay for work of equal value for the public sector, particularly the so-called extended public sector, that funding of pay equity programs should not come from the very regressive property tax base.

Bill 105 must be amended to ensure schools, municipalities and health care institutions are not trading off the health and welfare of the sick or our youth in order to achieve pay equity. Payments must be incorporated into the more progressive income tax base at the provincial level and passed on to those implementing the law.

As well, in the Ontario Federation of Labour model pay equity law, we call for an amendment to the Labour Relations Act to ensure that all collective agreements include clauses providing for pay equity programs. Bill 105 should include such a clause, which would entrench the collective bargaining of pay equity programs into our labour relations laws, just as protections such as basic grievance procedures are now guaranteed. Similarly, in Bill 105, the government must amend other labour relations legislation for those not covered by the Labour Relations Act, such as the Crown Employees Collective Bargaining Act.

In conclusion, Bill 105, as it is currently proposed, is only a partial measure. It requires substantial amendments to make it a truly effective tool to achieve equal pay for work of equal value. This committee must ask itself whether it is building in protection for Ontario's working women, protection from reprisal, protection to ensure women in the unions have the right to negotiate the programs, the right to information, the right to lay a complaint when they believe an injustice has occurred and, most critically, the right to fair wages for a hard day's work.

This bill must not only be extended to all public sector workers, but it must also set the standard for laws to come. Where we have vigorously opposed dividing public and private sector women into two equal pay laws, we equally oppose any effort to give them different standards or rights in these laws. Thus, amendments to Bill 105 must remember to set the framework for justice in pay for all working women, be they unionized or not, be they immigrant women or women of colour, or on piece work or salaried in the public or the private sectors. Bill 105 must aim for the goal that we have all referred to for so long, equal pay for work of equal value, and provide the working model and the standards to achieve this most important objective.

Mr. Chairman: I appreciate the time and effort you have put into a very comprehensive statement before this committee. I have not yet had an opportunity to peruse the report in the public hearings on pay equity, but as you stated in your statement, many of your comments were based on that report. We look forward to reading that as well, to get some additional input and background on the question.

I will now turn the time of the committee over to any questions that you might want to raise. Mr. Polsinelli has indicated he would like to ask some questions first. Mr. Gillies is also on the list.

Mr. Polsinelli: Ms. Griffin, I want to thank you for a very comprehensive and stimulating presentation to this committee.

Have you had an opportunity to examine the recent amendments that have been tabled by the government dealing with reprisals, the enhancement of a complaints mechanism and the access to information issue?

Ms. Griffin: Which recent ones are you talking about?

Mr. Polsinelli: The government amendments that have been tabled dealing with those issues.

Ms. Griffin: Somewhat. We still do not think they go far enough.

Mr. Polsinelli: It is interesting that your brief, as have many briefs that have been presented to this committee, approaches Bill 105 as if it is already a fait accompli that it will be extended to the broader public sector. I am sure you are aware that it is not the government's intention to do so, but rather to bring in legislation this fall dealing with the broader public sector and the private sector. We hope to have all-party support on that legislation too.

If your brief were dealing strictly with the narrow public sector as defined by Bill 105, would your criticism still have been as strong? Let us take it piece by piece. For example, on enforcement, section 21 of this bill, dealing with the narrow public sector, provides that an order of the Pay Equity Commission can be enforced as an order of the Supreme Court of Ontario. Would that have been satisfactory?



16:30

Ms. Griffin: We would still have problems with it because going to the Supreme Court is unwieldy, costly and time-consuming. The union involved in the narrow public sector would still have the same problems we have if it were extended to the broader public sector.

Mr. Polsinelli: What enforcement mechanism would you like to see?

Ms. Griffin: We spell that out. We want the commission to have the powers of enforcement.

Mr. Polsinelli: The commission would have those powers.

Mr. Pilkey: We want the commission to have the same powers as the Ontario Labour Relations Board.

Ms. Griffin: Right.

Mr. Pilkey: We do not want a commission set up where they can appeal to the courts. As you know, the OLRB has a clause in the act, and we would expect the same thing in any legislation.

Mr. Polsinelli: Perhaps I can ask one of our ministry staff to elaborate on the enforcement mechanism that is currently in the bill. Ms. Klein, can you explain it?

Ms. Klein: One of the difficulties of enforcement against an employer who is the crown is the Proceedings Against the Crown Act, which restricts severely what you can do, but on the other hand enhances the enforcement where it does exist. If this sounds a little paradoxical, let me take you through the steps of filing such an order against the crown in the Supreme Court of Ontario.

When an order is filed against the crown and an application is made for enforcement, what you seek is a declaration from that court. We appreciate that this is more time-consuming than being able to have the commission send the sheriff out to seize assets. You cannot seize the crown's assets and sell them off from money judgement. Where there is an order that can be translated into money terms such as, "Pay this group of workers this amount of money immediately," and the court issues a declaration that the order has been duly made, that becomes a charge payable against the consolidated revenue fund. While on the one hand you have a limited scope for enforcement, on the other hand you have an enhanced enforcement in that it is a very deep pocket into which you can reach.

The second thing is that you cannot fine the crown as such because the prosecution is to be conducted by the crown. As you will appreciate, under the Labour Relations Act, prosecutions are not frequent. Other means are sought. That is against private employers. Against the crown, there is something manifestly illogical about the crown attempting to prosecute itself and levy a fine against itself.

The Supreme Court of Ontario has another mechanism. Noncompliance with an order of the commission can be met with a citation for contempt. This could lead to a fine against an individual; that is to say, the assumption is that the noncomplying individual is acting against the orders of the employer, is on a frolic of her own, as it is put, and is therefore chargeable as an

individual and not as a representative of the crown. Such contempt could lead either to a fine or imprisonment or perhaps both. It is not completely toothless although the teeth may be somewhat hidden because of the nature of the Proceedings Against the Crown Act. I do not know whether that answers the question.

Mr. Pilkey: Does that put Queen Elizabeth in jail?

Ms. Klein: No, but it might well put the lady-in-waiting in jail.

Mr. Pilkey: Oh, I see.

Ms. Klein: Which would annoy the Queen no end.

Interjections.

Ms. Fish: Mr. Chairman, on a supplementary about the problems that staff has elucidated on prosecuting the crown, I wonder if staff could advise whether there is any other legislation administered by other ministries that would have the effect of prosecuting the crown.

Ms. Gigantes: What about health and safety legislation?

Ms. Fish: Or environment legislation. I suggest to staff that there are any number of precedents extant in other ministries.

Mr. Chairman: The Jim Snow issue is one that might quickly come to mind where a minister was in fact prosecuted, found guilty under a provincial statute and was subsequently fined.

Ms. Fish: The minister and the deputy, not to put too fine a point on it.

Mr. Chairman: The minister and the deputy. Ms. Fish is quite correct.

Mr. Polsinelli: The same thing could happen to others.

Mr. Pilkey: When you get Jim Snow, you are getting close to the Queen, I will tell you.

Ms. Klein: In a sense, you can prosecute anyone in a personal capacity, but I think it is possible to reach the same effect through the contempt of power.

Ms. Fish: I realize you are saying it is possible to prosecute anyone in a personal capacity. In the particular case I am referencing, an environment prosecution, it was not in a personal capacity. It was as named office holders and it was in their capacity as minister of the crown and deputy minister of the crown and not as individual citizens, but in their specific capacity as a minister and deputy of the crown. I would note that in the first instance and then say to you, if it is your view that you can achieve the same through application of the courts, then why would you not have proceeded through what the delegation suggests might be the simpler and more direct route of simply affording a direct prosecution?

Mr. Polsinelli: We have given the Pay Equity Commission the right to make certain determinations and issue certain orders. The enforcement mechanisms are required in the event that the individual or the agency that is



covered by the legislation refuses to obey the order of the Pay Equity Commission. At that point, you need the enforcement mechanism and that enforcement mechanism as we see it is best achieved through the court system.

Personally, I find it a little bit ludicrous that an individual should be allowed to sue himself, because that is effectively what you are saying by saying the crown can fine the crown. I just find that a little bit ridiculous. However, if you provide the enforcement mechanism through the courts, so that if the order from the Pay Equity Commission is a monetary order, then once it has been ratified by the courts, it is a debt on the consolidated revenue fund and money can be pulled out right away.

If an individual in a particular ministry or in a particular agency has personally refused to implement the order of the commission, he could be found in contempt of court and he could be thrown in jail under the contempt procedures that are available just on a general basis. I believe that as long as we are the government, we are going to keep our word. You may have been burned before, but let us just hope it does not happen again.

Mr. O'Flynn: It is the guys who will follow you, we would be worried about.

Mr. Polsinelli: Let us hope we stick around for a while.

Ms. Griffin: Just before we move off this, you started your comments by saying that our presentation seemed to imply that extension was a fait accompli. We realize it is not, but that is why we are here making this argument. We want it extended and we want to make that point here today as loudly and as clearly as we can. We are not accepting your definition of the public sector as this very narrow body. "Zap, you are frozen" in 1983 should now turn into "Zap, you are equal" in 1986.

Mr. Polsinelli: I can well appreciate that you want it extended, but the policy determination this government has made is that it will be done in two phases, the first phase being a bill dealing with the narrow public sector.

Ms. Griffin: I understand what you are saying.

Mr. Polsinelli: The second phase will be a bill dealing with the broader public sector and the private sector. Now we hear you. I understand what you are saying, but it seems evident to me that because of the very many complaints you have with respect to this bill, as it would apply to the broader public sector, it would be inappropriate to introduce this bill.

16:40

Mr. Charlton: On this issue of the court route and the contempt route, perhaps the Minister of Labour--and you can pass this along to him--should talk to his colleague the Minister of the Environment (Mr. Bradley), who found the contempt route was a particularly unworkable one, because the court did finally rule contempt, but only after flagrant and repeated failure to comply with the order of the court. That becomes a very lengthy process. In this case, it was some six years.

Ms. Gigantes: You would have to get somebody else.

Mr. Pilkey: Somebody could retire and collect his pension benefits by the time you got around to that.

Mr. Polsinelli: Women have been waiting for pay equity for hundreds of years, at least 43 years in Ontario.

Mr. Pilkey: That is a good point; I had not thought of that. What do you say to that?

Mr. Chairman: It is totally irrelevant to the subject at hand, but go ahead. I will allow you to continue, since you are on a roll.

Mr. Posinelli: Thank you. I appreciate it. I am glad we had the very exhaustive discussion regarding the enforcement procedure.

I would like to talk about the pay equity fund. You are recommending that we set aside three per cent of payroll a year until pay equity has been achieved. I am sure you are aware that Minnesota, for example, which has pay equity legislation, found that it achieved pay equity after 3.7 per cent of payroll had been committed. Manitoba has put a cap of 4 per cent of the payroll at one per cent a year. What is wrong with Ontario committing one per cent of payroll every year with no cap until pay equity has been achieved? Why do we have to put such a large drain on the public purse immediately?

Ms. Griffin: We want it faster, for one thing. The more money you put up front, the faster the equal value will be achieved. The other thing we have to take into consideration is that the work force in Manitoba is much different to the work force in Ontario. They have a much larger civil service, for instance, and so a much larger organized group than we may have in Ontario. The gap may not be as large.

Ms. Gigantes: In relative terms.

Ms. Griffin: In relative terms; that is right.

Mr. Posinelli: My understanding is that the gap is relatively the same in Manitoba. It is quite simply that this legislation contemplates putting aside one per cent of payroll every year until that gap is achieved. That gap takes four years if it is four per cent, five years if it is five per cent, and six years if it is six per cent.

Ms. Griffin: And 15 years if it is 15 per cent.

Mr. Posinelli: If it happens to be 15 per cent, but there is no cap. The other jurisdictions that have implemented this have either put a cap on the amount of the adjustment or arbitrarily cut it off after a certain point. Would you not agree that Ontario at least is one of the most progressive provinces in dealing with this gap?

Mr. Pilkey: And the wealthiest.

Ms. Griffin: No, I would not agree with that. We want more money and we want it sooner.

Mr. Polsinelli: That is a common union demand. I accept that.

Ms. Griffin: We do not apologize for it either.

Mr. Polsinelli: No, and I think you are doing your job by always asking for as much as you can.



Ms. Gigantes: We are doing it later than the other jurisdictions.

Mr. Polsinelli: I have one final point and then I will leave it to the balance of the committee members to ask their questions. In terms of the gender predominance, on page 18 of your brief you say, "Bill 105 proposes an arbitrary and artificial cutoff of male- and female-dominated job groups."

If we look at the definition of predominantly female groups of jobs under section 1 of the legislation, that section says that if a group is 60 per cent female, it is a predominantly female group of jobs. It goes on to say the employer and the bargaining agent can negotiate any other group to be a predominantly female group of jobs. That means it works on the strength of the collective bargaining process, and while you are negotiating a pay equity plan, you would be able to negotiate whether a group of jobs is predominantly female. If you cannot reach a consensus or agreement on that, then you can employ the complaints mechanism to complain to the commission to have a determination made whether or not it is or should be designated a predominantly female group of jobs.

I submit to you that, rather than being arbitrary and artificial, what it does is to set up a base of 60 per cent. If 60 per cent in a group of jobs is female, then it is deemed to be a predominantly female group of jobs. If there is less than 60 per cent, it is up to the bargaining agent and the employer to negotiate whether it should be included as a predominantly female group of jobs. I submit to you that it is rather permissive and quite expansive, rather than artificial and arbitrary.

Ms. Fish: May I have a supplementary on that? Within the narrow scope of the bill as it stands, directed as it is to only the narrow public service, in what cases would the employer--in this case, the government of Ontario--decline to define a group that had women in it for purposes of pay equity?

Mr. Polsinelli: I do not purport to speak for the employer, but this legislation is very permissive in the sense that it builds on the strengths of the collective bargaining process. It is up to the bargaining agent and the employer to determine which groups should be identified as predominantly female or predominantly male groups. If they cannot reach an agreement, then the complaints mechanism is in place so that the pay equity commission can make that determination.

Ms. Fish: Perhaps I could ask a question of the delegation. Can you see an instance where a group of employees that may have women in it, where the cutoff is less than 60 per cent, where that group is lower paid than another group in a comparable value estimation, where the union representatives would not wish to see that group designated for pay equity purposes?

Ms. Griffin: No.

Ms. Fish: I have a question then of the parliamentary assistant. Can you tell me, under those circumstances, what possible occasion would arise when the employer in your bill--that is to say, the government of Ontario, your government--would decline to agree with the representation of the bargaining agent that a group of less than 60 per cent women, if underpaid, would not be designated for pay equity?

Mr. Polsinelli: If there were no arbitrary cutoff of 60 per cent, every group would have to be negotiated. There would be a whole process of negotiations, which might be quite extensive, to determine which groups are covered and which groups are not. The 60 per cent is the most permissive figure of any jurisdiction that has implemented pay equity. As a matter of fact, Manitoba has a 70 per cent cutoff figure; ours is 10 per cent more permissive. It is a base from which the employer and the bargaining unit work.

Ms. Fish: Is there some reason you would not feel that all the groups should be evaluated and those that are disadvantaged by virtue of equal value could be designated for pay equity purposes?

Mr. Polsinelli: I make no apology for submitting very progressive legislation to this committee, legislation that is intended--

Ms. Fish: We would like to see some. At the moment, it is sharply regressive.

Mr. Polsinelli: --to redress the gender bias that exists between predominantly female and male groups of jobs.

Ms. Gigantes: Mr. Chairman, on a point of order: Mr. Polsinelli initially addressed a question to our delegation. They did not get a chance to respond.

Mr. Polsinelli: I have finished my remarks.

Ms. Gigantes: Were they remarks or questions?

Mr. Polsinelli: Remarks or questions, as they may be interpreted.

Ms. Gigantes: Perhaps the delegation would like to respond.

Mr. Chairman: If you would like to respond, that is fine. We will allow you to do so. Mr. Gillies is next on the list, but I will give you an opportunity, if you can remember the question that was raised.

Ms. Gigantes: You are always concerned about our schedule.

Ms. Griffin: We do not have enough time.

Mr. Chairman: I thought the imperfections of Bill 105 were in the presentation we had earlier. I will move to Mr. Gillies and carry on with the delegations.

Mr. Gillies: My questions are along the same line anyway. I want to congratulate you on your brief. I do not know how many years we have been sitting in these committee rooms, Cliff, but here is a case where I agree with virtually every word in your brief.

Mr. Pilkey: We might have to go out and rewrite that.

Mr. Chairman: You are going to force Mr. Pilkey to rethink his position.

Mr. Polsinelli: Since he has been in opposition, he has not disagreed with anything.



Mr. Gillies: I am very agreeable.

Mr. Chairman: Mr. Polsinelli, you are out of order. You had a lot of time to present your case. Mr. Gillies now has the floor.

Mr. Gillies: It may have been out of order, but it was a good line.

Many of the amendments that we will be putting forward reflect various aspects of your brief, but there is one point I want to zero in on. I have heard a number of very good arguments questioning the need for the gender predominance feature in the bill, the 60 and 70 per cent. We have been over them, but I want to come back to Elizabeth Millar's comments. I wondered whether you could give us any more background on that. I just took it out of your report that she said none of the cases that were successfully adjudicated under the federal jurisdiction would have been proceeded with if these gender predominance figures or thresholds had been in the federal legislation. Can you tell us more about that?

16:50

Ms. Griffin: The federal threshold was 70 per cent, and for the groups which went forward, I understand they were not so much adjudicated as they were negotiated settlements because they were going to be adjudicated. In any event, they could not have gone forward because the 70 per cent figure was higher than the participation rates of women in the various groups which went forward. Those rates were anywhere from 65 per cent down to as low as 52 per cent, so they could not have gone forward.

We are afraid that if we have an artificial figure in Ontario, we will have the same situation. Where does 60 per cent come from anyway? It was imported from the US, as far as we know. This whole idea of setting figures comes from the US model. It does not necessarily mean that it is good, workable or right.

Mr. Polsinelli: We would like to think we are more progressive than Manitoba.

Ms. Griffen: Good luck.

Mr. Gillies: I was not aware of these figures. I am most interested in this. It says that in the case of the general services workers in Ottawa, which is a case most of us know a bit about, there were three subgroups; one hit 60 per cent, another was at 59 per cent and the third was at 51 per cent. The great bulk of those workers would have been out of luck.

Ms. Griffen: Our other fear is the kind of manipulation by employers when there is a percentage figure; that the hiring practices and the way in which people are moved in and out of classifications is open to abuse. With the way in which employers hire people and the way in which they leave them in classifications or move them out of classifications, if there is a 60 per cent figure, there is nothing to stop their ensuring that they hire only 59 per cent women. That is our major fear, and we have lots of examples of that type of abuse with other issues in the work place.

Mr. Gillies: A delegation we had yesterday raised that possibility of almost gerrymandering, if you will, and it is a very real concern.

Elizabeth Millar also said in her comments--and I wonder whether you have any thoughts on this--that she felt the threshold provisions may be a direct violation of section 15 of the Canadian Charter of Rights and Freedoms and that if that feature remained in the bill, it may be necessary to launch an appeal under the charter.

Ms. Griffin: It is possible. I have also seen the paper today. I understand there was a delegation here yesterday which raised that very concern. The charter allows for individual rights, and if those rights are violated, that could leave the legislation open to those kinds of charges.

Mr. Pilkey: The only point I want to make on that one, Phil, is that we want legislation where we do not have to get into any battles over the charter. I want to tell you that. We are going to be faced with all kinds of fights under the charter. We are into it knee deep right now on the charter, and if there is any way to avoid it, anything that would alleviate the possibilities of facing charter cases, I think this committee should recommend that.

Ms. Griffin: Exactly.

Mr. Gillies: That is our intention. The point is well taken.

Perhaps I should direct this to you, Cliff, but just generally, the complexity of this bill bothers me. Does it need to be this complicated in your opinion? You have dealt with labour legislation of various types for years, and I just have to think we could come up with a five-page bill that would have done what we all seem to believe needs doing.

Ms. Griffin: If you look to the back of our report, you will find the brief that we presented to the green paper hearings. Our copy of the federation's model pay equity legislation is a lot clearer, a lot more concise, not nearly as complicated and a lot easier to understand than Bill 105.

We were afforded the opportunity to check that through some researchers who were given to the Premier's labour advisory committee this summer. Those researchers went out, and the results of testing our legislation against a number of various situations--we sent the results to the Premier--indicate that the federation's model pay equity legislation stands up and could be applied in work places in Ontario. Those are the results of the work that was done by those researchers.

Mr. Pilkey: As a matter of fact, those findings can be made available to this committee once we meet with the Premier and he has them. There is no reason why you people ought not to have them as well. We hope to meet with him very shortly.

Mr. Chairman: To allow for a reasonable and equitable allocation of time, Mr. Gillies, will you allow me to move to Ms. Gigantes now?

Mr. Gillies: By all means. I have just one parting shot. We had a delegation earlier, the Ontario Progressive Conservative Association of Women, and all four of the points in its brief are in yours also. If that does not scare you--

Mr. Pilkey: There is support all over the place. This is great.



Mr. Chairman: When I chair a committee, you would be surprised at the degree of unanimity one arrives at. Ms. Gigantes, you are next.

Ms. Gigantes: It is a super brief. Thank you very much. It will be very helpful to us.

At the start, I would like in passing to say that whatever one may say about the content of the Manitoba legislation, when you read it you know what is there. I have always found legislation drafted in Manitoba, and indeed in Quebec, to be much more clearly understandable. Some of that problem has to do with our phraseology here in Ontario and is probably something that will take us years to break out of. The other problem is the clarity of thought behind the legislation, whether you like the result or not.

I want to ask you about an area we have had some presentations on, the question of Charter of Rights challenges. We have also had it suggested to us by people with good legal experience in labour areas that we may run into a problem when decisions of the commission are taken to judicial review on a consistent basis. I wonder whether you have had any experience with that kind of difficulty in any of the areas of labour legislation you have dealt with. I know you would not under the Labour Relations Act, the Workers' Compensation Act and so on, because a special tribunal system separates a commission from the--

Mr. O'Flynn: It is still subject to judicial review.

Ms. Gigantes: Will you explain that for us?

Mr. O'Flynn: Decisions of the Ontario Labour Relations Board are subject to review in the courts.

Ms. Gigantes: At a certain level.

Mr. Pilkey: You can correct me. Sean is the resident expert on this. My understanding is that they review only to the extent that the Labour Relations Board superseded its jurisdiction in determining the extent of the legislation. They cannot do anything if it falls within the framework of the legislation. No courts can change that.

Ms. Gigantes: That is because there is a tribunal system involved, as I understand it.

Mr. Pilkey: The law provides a privacy clause for the board. I do not know whether you could ever legislate a privacy clause that excluded the courts entirely.

Ms. Gigantes: No, that would not be the purpose.

Mr. Pilkey: I am not persuaded you ever could. Certainly, there is a privacy clause in the Labour Relations Act. The only review is if you have gone beyond the bounds of the act itself.

Mr. O'Flynn: If the decision is within the bounds of reason, they do not have to agree with it. If it is within the bounds of reason they say, "We are not going to interfere."

Ms. Gigantes: We are told that because of the proposal in Bill 105, the commission itself decides all matters of fact and law, perhaps having perhaps amended an equal pay plan and made a judgement, and then look to enforcement, if that could be challenged through judicial review on a consistent basis because there is no other mechanism of appeal that is readily available.

Mr. O'Flynn: If the same clause is put in as is in the Labour Relations Act, then I presume the opportunity for the court to review would be limited in the same way.

Ms. Griffin: The other thing is that a review of Labour Relations Board decisions is very rare.

Ms. Gigantes: Very rare.

Mr. Polsinelli: Subsections 22(1) and 22(2), the clause you are talking about, the privative clause, is identical to the clause in the Labour Relations Act.

Ms. Gigantes: I will go back and study it more. You heard the submissions yesterday.

Mr. Polsinelli: Yes. I did not quite believe everything that was said yesterday but I accepted it as a submission.

Ms. Griffin: I hope he is not going to say that tomorrow.

Mr. Chairman: You can be assured that will not happen as we are not meeting tomorrow.

Ms. Griffin: Good. Thank you very much, Mr. Chairman.

Mr. Polsinelli: Ms. Gigantes, the lawyer yesterday was expressing her legal opinion, and the legal opinion of one lawyer can be completely different from the legal opinion of another lawyer. We will not know which one is correct until a court has adjudicated on it. While that was her opinion, I disagreed with it.

Mr. Chairman: On behalf of the committee, I would like to thank the Ontario Federation of Labour for coming in, Mr. Pilkey and the delegation. You have made your position very clear, and I can see you have not only done a great deal of work on the report, but also expended a substantial amount of money putting your facts and figures together. That is going to be extremely helpful to us. Thank you again. We look forward to getting on with the deliberations of the committee in about a week.

Mr. Pilkey: Thank you and the committee for the opportunity for us to make this presentation.

The committee is adjourned until Monday, October 20, when we shall resume our discussions after routine proceedings of the House.

The committee adjourned at 5:03 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

MONDAY, OCTOBER 20, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)  
VICE-CHAIRMAN: Fish, S. A. (St. George PC)  
Callahan, R. V. (Brampton L)  
Charlton, B. A. (Hamilton Mountain NDP)  
Cooke, D. R. (Kitchener L)  
Gigantes, E. (Ottawa Centre NDP)  
Hart, C. E. (York East L)  
O'Connor, T. P. (Oakville PC)  
Partington, P. (Brock PC)  
Polsinelli, C. (Yorkview L)  
Rowe, W. E. (Simcoe Centre PC)

Substitution:

Gillies, P. A. (Brantford PC) for Mr. O'Connor

Clerk: Mellor, L.

Staff:

Ward, B., Research Officer, Legislative Research Service  
Revell, D. L., Legislative Counsel

Witnesses:

From the Ministry of Labour:

Wrye, Hon. W. M., Minister of Labour (Windsor-Sandwich L)  
McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy  
Minister, Labour Policy and Programs



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, October 20, 1986

The committee met at 4:02 p.m. in room 228.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: Members of the committee, I would like to get this afternoon's meeting under way. The first order of business is to discuss the possibility of one of the Ministry of Labour's staff, Heather McAllister, doing a walk through the bill to give us a precise overview of its content. Heather has offered to do that and the minister has consented. I believe that is correct; Mr. Wrye? If the members of the committee would like to do so, we could start this afternoon.

There is the question of the amendments that have been placed. The Conservative amendments were placed, I believe, on Friday, and were received, at least by the minister, on Friday.

Hon. Mr. Wrye: No. They were received this morning at approximately 11:35.

Mr. Chairman: Correction; they were received this morning. The third party's amendments were handed to the minister just as he was sitting down. In fairness, I think there will be some difficulty in asking the minister to respond to those amendments within a matter of minutes after having received them.

The walk through the bill, if the members of the committee will agree to it, will serve a couple of purposes. It will give all of us a better handle on Bill 105 and it will give the minister some opportunity to prepare his responses to the amendments being proposed. That is why I would like the committee's concurrence and comments regarding the walk through the bill.

Mr. Polsinelli: Initially, I have no objection to go through the bill, discuss it and have what you call a walk through it, but it seems to me we are about five weeks late in that. I would have thought that committee members would have wanted to do that prior to the commencement of public hearings so they could have asked intelligent questions.

If the committee members feel they need a walk through the bill at this point so they can understand it, I have no objection. However, I think we are about five weeks late. I would have thought that they would have accepted the offer of the ministry five weeks ago, prior to the commencement of the public hearing process.

Mr. Chairman: Could I respond by indicating that the government did table some amendments during that five-week period?

Mr. Polsinelli: That is not so. The government amendments were tabled prior to the commencement of the public hearing process.

Mr. Chairman: All right. You are not disagreeing with this?

Mr. Polsinelli: No. I am not disagreeing with it; I am just expressing a bit of surprise that someone has made that request at this point.

Mr. Chairman: Let me make it clear that no member of the committee has made that request. It was felt--and I do not want to put words into the mouth of the minister or his staff--that there might be some benefit in doing that. If the committee decides otherwise, then we will not have a walk through it. It is simple as that. It is to help the committee.

Mr. Polsinelli: Please do not note my comments as an objection, but rather as a bit of--

Mr. Chairman: An observation?

Mr. Polsinelli: An observation perhaps.

Ms. Gigantes: A snarky one.

Mr. Polsinelli: Snarky is a nice word.

Mr. Callahan: I was originally on this committee. I was not here at the outset. I assume that would have been the process so that the committee would be able to have the witnesses before it and ask them particular questions. I have read through the bill. You are not meeting with the brightest legal eagle in the world; it is a very difficult bill to understand.

Mr. Chairman: Do not put that to a vote.

Mr. Callahan: I would have thought that process would have been the initiation. Otherwise, the questions that were asked of the witnesses, in my view, probably turned out to be rather--they could have been meaningless. I do not know; I was not here, so I cannot say.

Mr. Chairman: I assure you the committee held its usual high level of performance in spite of your not being here.

Mr. Callahan: Is that right?

As I say, I do not have any objection to it, but I support Mr. Polsinelli's statement. I would have thought that was the procedure, particularly with a bill of this type. It is dealing with a very important issue. We would have been a better position to address the concerns of the people coming before us as witnesses and in trying to address them in terms of the bill and any amendments.

Ms. Gigantes: I think it is a good idea. On behalf of myself and my caucus, I would like to apologize for the length of time it took for us to put our amendments in a form we thought was suitable.

Part of the reason for that is that, up until the last day of public hearings, we were getting issues raised before this committee by presentations made by members of the public, which many, if not all of us, on the committee had not given much thought to before.



It is silly to say that one knows all the questions before a public presentation. One gets good questions raised by the public. That is why we have public submissions. It is for the public to come and tell us what is good and what is not good in a piece of legislation and whether we are actually meeting the problem we say we are trying to address.

That is why our amendments have taken a long time and why I think it is only fair for the government to have the time to take a look at and respond to them.

Further, since it is the first time for either of the opposition parties to look at each other's amendments to see where they coincide and where there is a difference, that pause to refresh ourselves about what we are trying to do would be well worth the time and well worth the good temper of members of the committee, Mr. Polsinelli.

Mr. Polsinelli: I accept that as a rational explanation of your late filing of the amendments, Ms. Gigantes.

Ms. Gigantes: Thank you.

Mr. Gillies: I have no problem with a walk through the bill. I am a little surprised that the Liberal members do not seem to agree with the minister's request that we have a walk-through. Apparently, the parliamentary assistant did not check with his boss about whether this was desirable or not.

However, unlike the government amendments, the amendments of the two opposition parties were drafted after careful review of what the delegations and people appearing before this committee thought should be in the legislation. They could not have appeared in written form much before the current time.

Frankly, I am ambivalent on whether we should have a walk through it or not. We are ready to go. However, if it is the wish of the minister and some members of the committee that we do so, we are quite prepared to do that.

Hon. Mr. Wrye: Let me say for the record at the outset that this minister did not ask for a walk through the bill, nor did any of his staff. I have some sympathy with the view I have heard that the time to discuss the details of Bill 105 in a technical sense was when the committee first met, but I have no objection to a walk through the bill.

I thank the committee members, particularly the critic for the New Democratic Party, for making the point I would make. Having just received the amendments, it is imperative for us to look at them.

16:10

There are 37 amendments from the official opposition. I have just received the NDP amendments and there appear to be more than 37. We are clearly going to need a period of time in which to review these amendments and reflect upon them. Perhaps during that period of time the members of the committee want to be taken through the legislation--and I do not know whether that discussion will include or could include the opposition amendments, since Dr. McAllister just received the NDP amendments and received those from the official opposition only about three or four hours ago--to answer all the details of the clauses as they stand now.

With your concurrence, Mr. Chairman, we could include the proposed government amendments, which were tabled before the committee members and given to committee members on the first day of the committee hearings back in late September.

Mr. Chairman: All right. We have had an ample opportunity to discuss whether a walk through the bill is of interest to the members of the committee. My understanding is, and I received a note to this effect, that the ministry staff were prepared to do a walk through it, not necessarily at the request of the minister, but in the interest of helping the members of the committee. If you do not want one, say so; if you do want it, that is fine. I will raise the question in this way. Are there any who are in disagreement with a walk through the bill?

We have a consensus on that; so we will let Heather take over at this point and we will proceed with an overview of the bill.

Hon. Mr. Wrye: There is one matter just before I leave, and we will start to work on the amendments. Is it the committee's expectation that we will not begin formal clause-by-clause debate until tomorrow or, as I would prefer, until the beginning of next week? Since 24 hours in which to look over some 100 amendments is really a very short time, I prefer if we could have an understanding that we would not begin clause-by-clause discussion until Monday next.

Mr. Chairman: That is effectively what you are asking then, because obviously you will not be able to be ready by tomorrow--

Hon. Mr. Wrye: It would be very difficult.

Mr. Chairman: We have got about 24 hours. Let us hear on that point from Mr. Gillies first and then Ms. Gigantes with respect to their views.

Mr. Gillies: In fairness to the minister, we certainly have no objection if he wants to take a few days to review this. There certainly is a great body of work to be done here and an awful lot of analysis of the amendments, and we appreciate that.

Our concern, and I am sure it is the same concern of all members of the committee, is that we do deal with this bill as expeditiously as possible, but we appreciate there are practical constraints to that. Within reason we would be guided by the minister in terms of the time he requires.

Ms. Gigantes: That is a perfectly reasonable proposal, and I would be quite willing to wait until next Monday. I hope some of the discussion that we go through as we walk through the bill or take a dry run at it is discussion that helps each group here understand what the other group is looking for so we may come to some overall agreement about where we are heading on this bill.

Mr. Polsinelli: I am sure the minister is going to find no objection from the government members with respect to his request, but in terms of the walk through the bill, I would like to make a suggestion for your consideration or for the consideration of the critics for the opposition parties.



As we are going to have a walk through it, as a government member, I would appreciate the interjection of the opposition critics as we are going through the various clauses, explaining how their various amendments would impact on the government legislation, so we do not have strictly a walk through of the government bill, but rather a walk through of the government bill with the amendments from the critics.

Ms. Gigantes: what I hope we could do is have some discussion about the proposals.

Mr. Gillies: I think that is an excellent suggestion, Mr. Chairman. That will make it a bit more of a free-wheeling process than just a rather dry analysis of the unamended bill, the government amendments. As you well appreciate, we will be getting into a lot more back-and-forth discussion that way.

Mr. Polsinelli: I also expect the debate on the various amendments to be limited. I do not expect we would undertake a debate, for example, on Ms. Gigantes's amendment, but rather that the chair would offer her an opportunity to explain what her amendment would do. We should have, at most, a limited response from the other members or one member from each of the other parties, no response at all or an explanation of what their amendments would do and how they would affect the government bill, thus leaving the debate for the clause-by-clause analysis of the bill.

Mr. Chairman: The chair will attempt to be fair and flexible in every respect.

Mr. Polsinelli: As always.

Ms. Fish: I want to clarify what Mr. Polsinelli may have said in his final words. The somewhat free-wheeling walk through the bill involving an explanation from the government and the two opposition parties about amendments would in no way obviate a careful and complete clause-by-clause debate and discussion of amendments as they are put forward.

Mr. Chairman: That is understood. There appears to be a consensus that we discuss the government's position along with the amendments, but attempt to keep it reasonably concise and, as Ms. Fish has very clearly pointed out, that the debate be withheld in its full context until we get into clause-by-clause discussion. I will attempt to keep you on target. If you will follow the direction of the chair, as I know you will, sir, having made the proposal in the first instance, we shall have no problems.

Ms. Gigantes: On a point of order: I have asked our committee legislative researcher to look at a letter addressed to Peter Partington, as acting chairman of this committee, by Judith Andrew of the Canadian Federation of Independent Business, dated October 8, 1986, in which she provides what she considers to be an explanation of the statistics she raised during the presentation of the CFIB brief a few days back.

An analysis of this letter's information and attached appendices plus further information from the federation will be available tomorrow. I wanted to let committee members know this would be the case. I consider some of the points she raised to be important ones that need to be addressed during our consideration of this legislation and any legislation dealing with equal pay for work of equal value. I want to alert the committee that I hope this material will be available tomorrow.

Mr. Chairman: Fine. That will be helpful.

Let us turn to Heather McAllister to take us through the bill.

Ms. Fish: On a point of order: Before Heather begins, it might be appropriate to remind members, staff and observers that this is a nonsmoking committee.

Mr. Polsinelli: Perhaps we should discuss this issue at this point as Ms. Fish has again brought it to the attention of the committee members. At the time this was last discussed, Mr. Callahan was not here and you, Mr. Chairman, were off in the Orient someplace.

Mr. Chairman: I have to get a motion to reconsider, Mr. Polsinelli.

Mr. Callahan: I do not care. I can suck my thumb. I notice you have been sucking your thumb, Mr. Chairman.

Mr. Polsinelli: Perhaps every hour we could take a five-minute break.

Mr. Chairman: That may be necessary.

You have raised a fine point, Ms. Fish. I appreciate your bringing it up.

Ms. Fish: I knew you felt that worry--

Mr. Chairman: Yes, I did. I felt it.

Ms. Fish: --because you were new to the committee and what the committee's rules were.

Mr. Chairman: I am not new to the committee and I was familiar with that particular rule.

Mr. Callahan: Next time we have a rye together, she cannot drink.

Ms. Fish: I guess that will affect you, Bob.

Mr. Chairman: Dr. McAllister, we should get under way.

16:20

Dr. McAllister: Thank you. In proceeding with a technical walk-through of the bill, I will be assisted by Susanne Silk-Klein, who I think can speak more eloquently to some of the provisions than I can.

If the committee members have no objection, I would prefer to proceed through the bill in a manner which is slightly off the chronological order, because I think it may enhance the understanding of the bill. You will recall that on the first day of committee hearings I did a very superficial and brief overview of the program that Bill 105 will provide for the public service, and I would like to follow that schematic approach to a certain extent, with some clarifications at the beginning to help in the understanding of the program.

I propose to go through the definitions very quickly. Perhaps it will be necessary to focus on a couple of the definitions in more detail than the others. Then I will go through sections 3 to 10 which provide an elaboration of what pay equity plans are, followed by the process by which pay equity



plans are to be developed and implemented within organizations, which will take us through sections 12 to 16.

Then I would like to deal with section 11, which lays out the process for the flow of pay equity adjustments which will be flowing from the pay equity plans. Next, I would like to deal with the two complaints provisions, sections 25 and 26, and also section 27 which follows. Then I would like to go through the role and functions of the Pay Equity Commission, which will be sections 17 to 24, and then conclude with an examination of the miscellaneous provisions in sections 28 to 31. Unless you have some objections, I will proceed in that manner.

Mr. Chairman: Is that agreed? Agreed.

Dr. McAllister: That takes us first to the definitions. I am not entirely clear whether it is the intention of the committee that I go through each one of these and read it to you or if you would like me to proceed until you come to a problem with my elaborations. Is there a preference? Okay.

I will proceed with the preamble, which I understand you usually deal with last in clause-by-clause discussion. It simply states that the intention of the act is that it is desirable to have an affirmative action program to provide pay equity for employees employed in predominantly female groups of jobs in the public service of Ontario.

Definitions for "predominantly female groups of jobs," "employee" and "the achievement of pay equity" follow in the definition section and in subsection 3(1), which lays out the principles of pay equity policy.

I will start with subsection 1(1) definitions. "Arbitrator." The bill will provide for the appointment of a single arbitrator. The arbitration process kicks in in the event that, in the development of pay equity plans for bargaining unit employees, the employer and the bargaining agent are unable to reach a satisfactory agreement.

"Bargaining agent" lays out the organizations that will be involved in bargaining in the Ontario public service, the unions which bargain under the Crown Employees Collective Bargaining Act, and the Ontario Provincial Police Association, which represents the Ontario Provincial Police force.

"Collective agreement." A simple definition: an agreement in writing between the employer and bargaining agent.

"The commission." The Pay Equity Commission, which, as you are all aware, is a new body established for the purposes of administering and enforcing the pay equity program.

"Compensation." That definition is a total compensation definition. The intent of the government was to have all forms of compensation considered in the achievement of pay equity.

"Effective date." That will be the date established for part II, which sets out the purpose of pay equity plans and their implementation.

"Employees" are all public servants who will be employees of the civil service and the six agencies that are covered by the bill, as enumerated.

"Employer" is the employer of an employee to whom this act applies.

"Group of jobs" means a grouping or series of jobs that bear a relationship to each other because of the nature of the work required to perform them and that are organized in successive job levels. Where there are no such job levels, it means jobs that are grouped together for the purposes of compensation.

If committee members would find it helpful, I can provide a concrete example, in the largest employer organization covered by the bill, of what a group of jobs would constitute.

In the Ontario civil service, jobs in the bargaining unit are organized into groups referred to as class series. For example, secretary 1, 2, 3, 4, 5, constitutes a group of jobs. Secretary 1 would constitute a job level, which is the next definition in this section.

Where jobs are not organized into successive levels--I might have referred to that situation earlier in the hearing--for example, where there is only one swine specialist, then the swine specialist under this definition would constitute a group of jobs.

"Job rate" is the highest rate of compensation for a job level. Each job level within a job group would normally have an entry rate and a top rate. As an employee enters the secretary 1 position, the rate of pay might be \$3 an hour, and as he or she leaves that job level it might be \$4 an hour, for example. The highest rate of pay for that job level is the rate used for comparison purposes.

"The Minister of Labour" is either the Minister of Labour or any other minister who might be appointed to administer the act.

I would like to deal with the definitions for predominantly male and predominantly female groups of jobs together. The gender predominance for groups of jobs will be determined by a count on the effective date of the bill.

If, on the effective date, 60 per cent of employees in a group of jobs are female, the group will automatically be designated as predominantly female. I will refer committee members to amendments that the government has also tabled. I refer you to the amendment--actually I have missed a couple already--for that section, predominantly female group of jobs, which changes "positions" to "employees."

As we note in the reason provided, this will allow a more accurate reflection of the actual gender of the incumbents in a group of jobs on the effective dates. Even if you had 100 positions for a job in an organization and you filled only 50 of them, you would still be able to identify that job as being "predominantly female," whereas if you based the count only on positions, you would never be able to do that, nor would you ever be able to identify that job as "predominantly male."

In addition, (b), (c), and (d) provide other means for identifying or designating groups as predominantly female or predominantly male.

The bargaining parties for bargaining unit pay equity plans may agree to designate either a predominantly male or predominantly female group of jobs. In non-bargaining-unit pay equity plans, the employer may designate a group of jobs as predominantly male or female with the Pay Equity Commission's approval. Furthermore, there may be regulations to designate a job as predominantly male or predominantly female. The difference between the two



definitions has to do with the gender standard for identification. As I indicated, it is 60 per cent of incumbents in a group of jobs for a female group of jobs, and 70 per cent for a male group of jobs.

Regarding the representative job level in a predominantly female group of jobs, for comparison purposes, in the implementation of pay equity plans, job levels will be identified and compared with respect to relative pay and relative value.

16:30

In looking at predominantly female groups of jobs, the act provides that the representative level that will be pulled out for comparison purposes will be the one with the greatest number of employees.

Subsection 1(2) simply provides that the Liquor Licence Board of Ontario and the Liquor Control Board of Ontario shall be deemed to be one employer and the employees shall be deemed to be jointly employed by them. For your information, the employees of those two organizations are members of the same union.

Subsection 1(3) simply provides that where a group has been designated as being either predominantly male or predominantly female, that designation is subject to any order or direction of the commission and is binding on the employer, the employees of the employer, and the bargaining agent, if any.

Subsection 1(4) provides that in the situation of a female group of jobs, should there be two job levels which have the same number of employees, the job level with the highest job rate shall be deemed to have the greater or greatest number of employees. So it is a mechanism for identifying which will be the representative level in the case where it is not arbitrarily clear.

Mr. Chairman: Could you hold for a moment? I have questions raised by Ms. Gigantes and Mr. Gillies.

Ms. Gigantes: It will be clear from the amendments we have tabled today that we are not looking to hang on to the definitions of "representative job levels," "predominantly female groups of jobs," "job rates" and so on. Nevertheless, I would like to understand how this is supposed to fit together in Bill 105. Try as I might and puzzle as I have with people who are expert in all this business of job levels, job rates, groups of jobs, and so on, I have real difficulty understanding.

I will indicate the areas where I have difficulty. "Job rate" on page 3 of our printed bill--and that raises another question while I think of it. Why is it that the latest copy of this bill says the first reading was April 22?

Ms. Fish: It died on the order paper.

Ms. Gigantes: Oh. It is because it was put back on the agenda. Thank you.

"Job rate," according to our definition on page 3, means the highest rate of compensation for a job level, but when we look to how that operates under part 11--and I know we are not there yet--it does not seem to operate that way.

If you look at subsection 5(2), pay equity is achieved when the job rate

for the representative job level in the predominantly female group is at least as great as the job rate for the job level in the predominantly male group with the lowest job rate.

Why have we defined "job rate" as meaning the highest rate of compensation for a job level, and in the operative part then swing over to say that when we are talking about job rate in the comparison section, we are looking at the lowest job rate? I think this has been the source of a lot of confusion.

Dr. McAllister: Yes, it may have been the source of a lot of confusion and I will try to clear that up. The job rate that is attached to a particular job level will always be the highest rate of pay for that job level. That is consistent throughout the bill. What section 5(2) provides for is that in the event there is more than one male job level of equal value but different rates of pay, the male job level with the lowest job rate--and as "job rate" it is always the highest rate of pay within that level--can be used for adjustment purposes and satisfy the intent of the legislation.

Ms. Gigantes: I thought I understood and now I have lost it again. What the comparison will be is with a representative job level on the female side. Then, if we have two male comparable job groups, we will look at the one at which the--

Dr. McAllister: Could I try to provide a more concrete example?

Ms. Gigantes: There is one where the job rate, the top rate for the males is the lowest rate. Is that what it says?

Dr. McAllister: That will achieve the intent of the bill. Let me give a concrete example because that may help to clarify it.

Let us say, for example, that the secretary 3 position is a representative job level in the secretarial job group. You look in the Ontario civil service for male job levels which are of equal value to that. You find technician 4 and gardener 5 are of equal value to secretary 3. However, those two male job levels have different rates of pay. The job rate will always be the highest rate of pay for each of those levels.

Ms. Gigantes: Now I am lost again.

Dr. McAllister: The job rate is the highest rate of pay for each level, regardless of whether it is a male job level or a female job level.

Ms. Gigantes: Then the highest rate of pay in your example for the two male job levels you have identified--

Dr. McAllister: That is right, for the technician job level and the gardener job level.

Ms. Gigantes: Do you mean there may be six job levels within the gardener 3 position?

Dr. McAllister: No, gardener 3 would be a job level. Within gardener 3, there may an entry rate and an exit rate, if you like. The job rate is the top rate, or the exit rate that gets you up to gardener 4, 5 and 6.

Ms. Gigantes: Okay.



Dr. McAllister: Always look at the value of the job level and the top rate of pay for the job level. The job rate is defined as the top rate of pay for that job level.

Subsection 5(2) provides that if there are different job rates for the two male comparator groups, the intent of the legislation can be satisfied by adjusting to the lowest job rate; in other words, by adjusting to--to put it a little more simply and not quite technically correctly--to the lowest paid male job level of equal value to the female group.

Ms. Gigantes: Sigh. I still do not have a handle on what subsection 5(2) is proposing to do; I am afraid I have a handle on it, but I am not sure.

The other definition I want to question is, when we define "predominantly female group of jobs" and then we look through those groups to find a representative job level, we are taking the job level with the greatest number of employees, even though it may not be the job level with the greatest number of female employees.

Dr. McAllister: That could be true.

Ms. Gigantes: There have been serious problems raised by people who have come to me and talked about subsection 5(2), about whether, when we get into the comparisons laid out in subsection 5(2), we are really going to be doing very much good for the great bulk of women who will be working in what this bill calls "female predominated work groups." This has to do with the technical nature of the way the definitions and the comparisons work together, taking the definitions we have just looked at and the operative sections.

Dr. McAllister: Perhaps I could provide a clarification. I refer you to subsection 5(4), which states: "For the purposes of this act, differences in rates of compensation between job levels in predominantly male groups of jobs of equal or comparable value shall be deemed not to reflect gender bias."

16:40

Subsection 5(4) is the rationale for subsection 5(2), although I prefer not to get into that. However, an elaboration of that provision may help to clarify subsection 5(2) and your concerns regarding job levels. Differences in rates of pay between male comparator groups will be taken not only--

Ms. Gigantes: I understand the rationale. It is the mechanism that I think is both unclear and perhaps unhappy.

Dr. McAllister: The mechanism I guess is one approach to implementing a benchmark comparison approach to job comparisons.

Ms. Gigantes: It has been pointed out to me that if we have a job group, such as a clerical job group, which was found under the test of the bill to be predominantly female, and if within that job group the job level with the greatest number of employees was, say, clerk 3, and the rate for most of the levels at clerk 3 was one which most women never got, then we would be comparing a job rate in a category with nobody in it to the lowest paid male comparative group.

If you looked at an adjustment at the top job rate of the category of employees in a category where there were no employees and adjusted that and

then subsequently adjusted all those underneath it by the same percentage, you would be doing a great disservice to the women who actually occupied most of the category, presuming they were women, because they might not be. You would be doing them a grave injustice in terms of the percentage increase that you would be giving them so that they would be coming up to any comparable kind of male pay group, male work group, even if you are comparing them to the lower of two possible male work groups.

Dr. McAllister: It would be a little inappropriate for me to comment on your policy opinion, but perhaps I could provide some information. It is the minister's understanding from the Civil Service Commission that a very high proportion of employees are actually at the job rate in any job level. However, that does not rule out the possibility that there could be an anomalous situation such as you have referred to.

Ms. Gigantes: That may well be true within the public service, but if we are looking, as we are here--and certainly the two opposition parties are looking--to have this brought to the full public service, examples have been brought to me of what would be called female-dominated job groups, the representative job level of which would not have people in the category that you call the "job rate" in your definition.

Dr. McAllister: I really cannot comment on the broader public sector. There is a related provision, however, which perhaps it would be appropriate to refer the members to, and that is subsection 5(3), because it has to do with representative job levels again and we might as well get that out of the way. That is a limitation on male comparator job groups and job levels.

For the purposes of this bill, if a job level in a male group of jobs has fewer than 70 per cent of its employees or incumbents being male, it cannot be used for comparison purposes. The rationale behind that is that you do want to compare the female jobs to job levels where the rate of pay should be absent of gender bias.

Ms. Gigantes: That would answer one part of the difficulty I see but not the other. Thank you very much.

Mr. Gillies: I just wondered if you wanted the opposition critics to lay out our proposed changes section by section?

Mr. Chairman: I think it would probably be more orderly if we spoke to them as we are going through, rather than to try to pick them back up again. I think that is what Mr. Polsinelli had in mind.

Mr. Gillies: Briefly, I can tell you that we would be moving amendments to change a number of the definitions. There are two requirements of the opposition. One would be the changes that are necessary to reflect the change in scope of the bill that we will be moving by amendment. The other addresses the question of gender predominance, which is a feature we intend to remove from the bill.

With that in mind, under section 1, the definition of "bargaining agent" will have to be changed to reflect the whole range of bargaining agents who could represent groups of employees within the broader public service. We would be moving an amendment that takes the definition from the Labour Relations Act and ties it back to the schedule of employers, which we would put into a later section of the bill to clarify those to whom we are referring.



Similarly, we will move an amendment that changes the definition of "employee" for the same reason. We have to ensure it is understood that "employee" means any person who performs any work for or supplies any services for compensation to the crown in right of Ontario or any other entity referred to in the schedule. This definition of "employee" should not be so broad here as to include those outside the public sector who provide service to the public sector, in other words, subcontractors and so on. However, we would propose to address that in another amendment, which is a form of contract compliance for those who supply services to the public sector. We want to be clear that when we talk about employees, we are talking about employees of the broad public sector.

Regarding the other change to subsection 1(1), the "job level" definition, we would move to strike that out, as it is reflective of gender predominance. Similarly, the definition of "predominantly male group of jobs" would be struck out. The definition of "predominantly female group of jobs" would be struck out. The definition of the "public sector," which becomes key in the spirit of our amendments, would be very simple. It would be: "'Public sector' means the crown in right of Ontario and all other entities referred to in the schedule." We will come to the schedule as an appendix to the bill, which we felt was the neatest way to do it, as opposed to having to run through this definition time and again in the bill. All the public organizations we propose to include in the bill will form the appendix, which is some eight pages long.

Ms. Fish: Perhaps you should run through that.

Mr. Gillies: Do you want me to run through that now or when we come to it?

Ms. Fish: Just give some indication.

Mr. Chairman: No. It is not necessary to do it now. In the interest of time, it is there for all the members to see in their package of amendments. Does anyone want to go through them now? I am only thinking of saving time on the matter.

Mr. Gillies: You are quite right, Mr. Chairman. For anyone who wants to see that, it is at the back of our amendment package.

We would change the definition of "representative job level in a predominantly female group of jobs" because of the gender predominance reference. We will be changing it to "representative job level means the job level in a group of jobs that has the greatest number of employees."

We will move to strike out subsection 1(3), which is to effect the designation of groups of jobs as predominantly female or predominantly male.

We will be proposing a change which strikes out subsection 1(4) as drafted here, which is the determination of representative job level, and puts in a new subsection: "Where two or more job levels in a group of jobs have the same number of employees, the job level with the lower or lowest job rate shall be deemed to have the greater or greatest number of employees," remembering our shared desire to try to nudge people up in their compensation, and not down.

Mr. Chairman: I would like to stop you at that point.

Mr. Gillies: Yes.

Mr. Chairman: I believe you were going to stop at that point in any event, so that we could go back to Dr. McAllister and pick it up.

If there are questions on the amendments that are going to be proposed, I will allow those. However, they have to be very specific and very brief. I do not want to get into debate.

Mr. Polsinelli: Mr. Chairman, I concur with what you just said. I do not want to get into a debate either, but I would like to understand some of the amendments being proposed. If you will allow me, I would like to ask Mr. Gillies, with respect to his amendment deleting the definition of "predominantly female group of jobs" and "predominantly male group of jobs."

The bill currently establishes definitions. By eliminating the definitions, do you propose that the employer and the employee, without a definition of predominantly female and predominantly male groups of job, have effectively to equate all jobs to determine whether all of them are of equal value and the relative importance of each one of the jobs, or rather that it becomes an item for negotiation between the employer and the employee as to which jobs get included and which get excluded? Without a definition of the groups, which jobs do you compare? Do you compare all jobs, or do the employer and the bargaining agent negotiate to determine which jobs are compared?

16:50

Mr. Gillies: It would be our expectation that--

Mr. Polsinelli: Let me just finish that. I guess that would be done in the context of the proactive phase of the program. If it were strictly complaint based, I could understand an individual complaining, in which case it would trigger the mechanism to have a comparison made; but in a proactive phase, where the employer has to come up with a plan, does he compare all jobs or does he negotiate with the bargaining agent?

Mr. Gillies: No. It would be our expectation that the employer would compare all jobs and we would wish that comparison to be based on job content, the yardsticks that we know form part of the bill--

Mr. Callahan: You better read the note before you answer.

Mr. Gillies: --skill, effort, working conditions and responsibility. It is going to be a delight having you here for a couple of days, Mr. Callahan.

Mr. Polsinelli: I am interested in the response, please.

Mr. Gillies: We propose the comparison of all jobs on a content basis. We believe the gender predominance feature of the bill is exclusionary, as was pointed out in the charts that were shown us by several deputations, excluding a group of employees in that middle area, if you will. We want all employees within the public sector to have access to the remedies in this bill.

Ms. Gigantes: I do not know whether we should be going through the definitions in order to look at what we are proposing in terms of changing mechanisms in the bill. Is that the best way for us to proceed? I could very



simply outline an answer for Mr. Polsinelli with respect to our amendments. In essence, he has asked, "How do you do it if you are not going to do it our way as proposed in Bill 105?"

Given that the group we are proposing to include under the coverage of this bill is, in large measure, organized, we are proposing in our amendment that the union representative or those agents who have been recognized as speaking for employees, as in the case of the wage restraint bill, should sit down with the employer and work out an equal pay plan. In the case where there is no union, the employer should be called upon to create a plan which would then be filed with the commission, reviewed by the commission and open to complaint.

Simply put, that is what we are proposing instead of the 60 per cent, 70 per cent predominance test and the very complex planning process Bill 105 lays out.

Mr. Polsinelli: Perhaps I can address the same question to Ms. Gigantes. While I can understand that the employer in the proactive portion of the program will be required to compile a pay equity plan, as it would be under our legislation and your amendments, once that plan is compiled, what does he compare? Mr. Gillies has indicated that the employer will have to compare every job in the public service, which seems to me a bit ludicrous.

Ms. Gigantes: We do not expect that to happen under our proposals. What we expect is that employers and employee representatives will sit down and, given their current understanding of the work groups within the place of employment, the job levels, etc., be able to make a pretty good outline of a plan, based on where they know the need is going to arise.

Mr. Polsinelli: If I can paraphrase, your proposal would require the employer and the bargaining agent to negotiate as to which groups they are going to compare.

Ms. Gigantes: We are calling it a joint bargaining team.

Mr. Polsinelli: You are proposing, rather than having the minimum standard that is established here as to which groups will be compared, to leave it up to negotiation between the employer and the bargain agent?

Ms. Gigantes: In areas where there are employee representatives and in work situations where there are no employee representatives, we are calling for the employer to file a plan within a three-month period, to have that plan reviewed by the commission and to have individual complaints open for employees.

Mr. Polsinelli: I do apologize for taking the amount of time from this committee, but in the unorganized sector within the public service that is not represented by a union, where the employer has to file a plan, under that plan does the employer make the determination about which groups to compare if we do not have a minimum standard as proposed in the present bill?

Ms. Gigantes: The employer would make the initial determination.

The other question one might raise about the definitions that we have looked at in the bill is the effective date. You will also see that we have

made several other changes to definitions which affect the mechanisms of the bill and which permit a change in the mechanisms of the bill, including the establishment of an appeals tribunal and the doing away with reference to pay equity because it is too reminiscent of the mechanisms proposed in Bill 105, which were not agreeable to most of the presenters who came before us. Instead, we have sought to substitute equal pay and equal pay for work of equal value as the elements this bill is trying to address in our legislative concerns.

I have always had trouble understanding "effective date" in Bill 105. What we have proposed is that the effective date should mean the day the bill is proclaimed law and comes into force. I have always had difficulty understanding the existing Bill 105 definition, which says that it means the day part II comes into force. Have we had a discussion on this before? Perhaps I could ask for some explanation of why it would have been phrased that way. What is the difference between the proclamation of the bill and the date part II comes into force?

Dr. McAllister: Having a different date to the date of proclamation for part II coming into force would, for example, allow the Pay Equity Commission to be established prior to the requirement to the parties to begin bargaining and the implementation of pay equity to begin because, as you can imagine, there would be potentially some lead time required in getting administratively ready to deal with the developments.

Ms. Gigantes: How long will it take to establish the Pay Equity Commission, technically?

Dr. McAllister: I do not believe I really know the answer to that.

Mr. Chairman: Can we take that question under advisement and refer it to the minister when he is here? Perhaps staff can take a note of it.

Ms. Gigantes: It is an important point.

Mr. Chairman: It certainly is. It is pretty hard to have the whole system operate effectively until the commission is in place.

Ms. Gigantes: I beg to differ. I think there are certain parts of the process that we are trying to come to grips with here, legislatively, which can begin. I do not have the experience to know how long it is going to take to set up a commission of the kind we are looking for to oversee other parts.

Mr. Chairman: Obviously, at some early point you have to have the commission in place; perhaps not at the very outset of the exercise, but at a very early point, unless you are not anticipating any problems.

Dr. McAllister: If I can speak to it, especially with some of the government amendments which would have the Pay Equity Commission involved more closely in monitoring the development and selection of pay equity plans, I do not think you can begin. The charging provision would be meaningless for the parties to begin working on the development of pay equity plans or the employer alone, if the commission is not in place. From a technical point of view, I expect it has to be a logical first step, or how do you know that people are doing what they are supposed to be doing?



Ms. Gigantes: It is an important point for our amendments, and so I would appreciate some sense of the time involved. How long would it take to find nominees and set up offices? At what point did the government intend, in Bill 105, to have the commission swing into action? At what point does the government feel it will be necessary to have the commission already established?

Mr. Chairman: Did you want to carry on with your explanation of those amendments?

Ms. Gigantes: Unless people have questions, our amendments are pretty straightforward on the definitions. I do not intend to take the time of the committee now to go into how those definitions work in the mechanisms of the amendments we have put forward.

Mr. Chairman: I have a request from one member of the committee for a brief break at this point before we carry on with section 2. Does that meet with your approval?

Mr. Gillies: The point Ms. Gigantes just made becomes rather important in the light of amendments we will be moving to section 11, regarding the anniversary date of the first payments being retroactive to February this year. When things come into effect, the terms of operation are key.

Ms. Gigantes: You have to look at our amendments and you will find a little more flexibility around that.

Mr. Gillies: Do you have something on subsection 11(2)?

Ms. Gigantes: Our amendments will not create a problem of effective date, except where we talk about the length of time for filing an equal pay plan. However, with respect to payments, it should make no difference under our amendments what the effective date or date of filing is.

Mr. Gillies: Okay. We can take a look at that, Mr. Chairman.

Mr. Chairman: Is there agreement on a brief break of five minutes at this point? I am not expecting that you will go back to your offices, but that you will just have a hallway respite. Five minutes and we will be back.

The committee recessed at 5:02 p.m.

17:10

Mr. Chairman: All right committee, we are going to begin again. While some members are still resuming their seats, I will ask Dr. McAllister to take us through the continuation of the bill, starting on section 2.

Dr. McAllister: Section 2 simply identifies to whom the act applies --the crown and public servants as defined in the Public Service Act--the organizations that are covered by the bill and also notes the bargaining agents representing employees covered by the act.

Next, I would like to go through part II, which sets out the purpose of pay equity and identifies the barebones, essential mechanism for achieving pay equity before going into parts III through VI, which lay out the process for the development and selection of pay equity plans.

Subsection 3(1) states the purpose of pay equity policy is to redress systemic gender discrimination and compensation for work performed by employees employed in predominantly female groups of jobs in the public service of Ontario. Of course, there are definitions for those key words in the definition section.

Subsection 3(2) sets out the mechanism for undertaking comparisons between jobs for identifying systemic gender discrimination in pay. That is to say, comparisons will be undertaken between the representative job level in a predominantly female group of jobs and a job level in a predominantly male group of jobs in terms of relative pay and in terms of the relative value of the work performed.

Section 4 sets out the criteria to be used in determining value and the only note I would make here is that this composite is consistent with that which is found in other equal pay for work of equal value legislation.

Subsection 5(1) identifies the achievement of pay equity as being when the job rate for a representative job level in a predominantly female group of jobs has been increased to, or is at least equal to, the job rate for a job level in a predominantly male group of jobs, where the work performed in the two job levels is of equal or comparable value.

Subsection 5(2)--and I would also draw your attention to clause 5(2)(a), which is a government amendment, so you can look at them together--sets out the basis for comparison in the event that there is more than one male job level under comparison of equal value to any particular female job level and provides that if the adjustment is to the lowest-paid male job level of equal value then you have achieved pay equity.

The proposed amendment, clause 5(2)(a), removes from the existing bill clause 7(d) the provision that requires that adjustments be made to all job levels within a female group of jobs that is consistent with that which is required to achieve pay equity for the individual job level. In other words, if secretary 3 is found through pay equity comparisons to require a 10 per cent adjustment in job rate, then secretaries 1, 2, 4, 5, 6, etc. would also receive a 10 per cent adjustment in the rate of pay. That would achieve the goal of maintaining relativities within a job group.

Mr. Chairman: Could we hold it for just a moment? Perhaps following the order that we have taken previously, I will go to Mr. Gillies and then Ms. Gigantes.

Ms. Gigantes: For me, that raises a lot of problems. It might be helpful, first of all--and I do not know what is available--if we had information on the number of job groups that would be affected by Bill 105 where the representative job level of female-predominated jobs would be. Most of the people in that representative job level would be paid at the top job rate.

Second, it is important to note that when we are talking about choosing one job level and saying there is going to be a 10 per cent adjustment here, 10 per cent may be all right for one job level but not reflect the reality of the need for adjustment in other job levels. It is pretty mechanical way to approach the problem, it seems to me.



Mr. Chairman: Is that all you wanted to say on that? Mr. Gillies.

Mr. Gillies: Thanks, I will again go through the amendments to the sections we have discussed, which went from section 2 to section 8 was it?

Dr. McAllister: Sorry?

Mr. Gillies: No, you finished after subsection 5. Section 2, of course, we will have to amend to reflect the broader public sectors as outlined in our schedule which forms an appendix to the bill. On subsection 3(1), we would have an amendment that removes the reference to gender predominance and again changes the section to reflect "public sector" as opposed to "public service." Subsection 3(2) will be amended to remove the reference to gender predominance in the identification of gender discrimination and would also be structured so that groups would be compared in terms of the value of the work performed and the compensation received for that work, as we discussed earlier.

We would be adding a clause 3(3)(a) which would stipulate that no employer shall establish or maintain and no bargaining agent shall bargain for differences in compensation between female and male employees who are performing work of equal or comparable value. In other words, this is the prohibition section. There was some feeling that as long as the bill applied only to the narrow public service where the government clearly was the employer, it would not be necessary to effect a clear statement that this discrimination was prohibited. We feel, in extending the bill as we are, that it is necessary.

We would then be adding a clause 3(3)(b), which is contract compliance. An employer shall not contract with a person for the supply of goods and services unless the person can demonstrate to the employer that there are no differences in compensation between males and females who are employed by the person and who are performing work of equal or comparable value.

This is necessary simply to prevent government or government agencies from contracting out work that they might otherwise do themselves in order to avoid pay equity.

17:20

We would amend section 5 to remove the reference to gender predominance as a basis of comparison for the achievement of pay equity. We would make a change to the reference to compensation adjustments. We would say that where adjustments are to be made in the rates of compensation at the representative job level in a group of jobs, all job levels in a group of jobs shall receive the same percentage increase. That is within the group. We do not want to discriminate against those lower-paid employees by necessarily making that a uniform percentage adjustment.

That covers everything we have up to the end of section 5.

Mr. Chairman: Mr. Polsinelli wanted to pick it up from that point. Do you have a brief comment to make?

Ms. Gigantes: I have a question, but I will wait for Mr. Polsinelli.

Mr. Chairman: All right. I will go to Mr. Polsinelli first.

Mr. Polsinelli: I have a question for Mr. Gillies. You indicate that the purpose of this legislation under your amendment to subsection 3(1) is to redress systematic gender discrimination. In subsection 3(2), you indicate that systematic gender discrimination will be identified by comparing two jobs, and the difference in value between those two jobs will be essentially attributable to systematic gender discrimination. Is that correct?

Mr. Gillies: We believe--and it was indicated in earlier discussions--that with the co-operation of employers and employee bargaining representatives and so on, jobs can be compared and that they need not be hived off, if you will, into quasi job ghettos determined by percentages.

It was put very well to me this morning by a couple of representatives of the Ontario Advisory Council on Women's Issues. I met them this morning. Their concern was that leaving in the gender predominance feature of the bill could militate towards the comparison merely of similar jobs. They alluded back to Bill 141. They said they felt that the bill, as drafted here with the 60 per cent and 70 per cent would accomplish little or no more than Bill 141 would have, a bill that was opposed by your party. We want to make sure the bill has more teeth in it than we feel it has as drafted here.

Mr. Polsinelli: I can appreciate the philosophical arguments of what you intend to do. I question what you are doing by these amendments. In subsection 3(1), you indicate that you are addressing the purpose of this bill under your amendment which would be to adjust systematic gender discrimination. Under subsection 3(2), as I read your amendment, that discrimination is identified by comparing various jobs.

If there is no gender predominance, it is conceivable that two jobs of equal value could be found, both of them 100 per cent occupied by males. If there is a wage difference, you are saying it is because of systematic gender discrimination, notwithstanding the fact that both jobs are occupied 100 per cent by males. That is a ludicrous derivation of your amendment.

Mr. Gillies: If I may paraphrase what you just said, it is a ludicrous interpretation of the amendment. We are trying to ensure that those women in those categories of jobs that may not have a 60 per cent predominance in comparison to male jobs that may not have a 70 per cent predominance could still be comparable under our amended bill. We feel that is desirable.

Mr. Polsinelli: I understand what you are trying to do, but--

Mr. Chairman: We are getting into a debate.

Mr. Polsinelli: No. I understand what you are trying to do, but do you not concede that under subsection 3(2), any two job groups can be compared? If any two job groups can be compared, it is conceivable that both job groups could have 100 per cent male employees. If there is a difference in the rate between the two job groups, according to your amendments, it would be because of systematic gender discrimination, which is ludicrous because they are both male.

Mr. Chairman: We have your opinion on that. Mr. Gillies, I am sure, has a response, but I have to move on in view of the time. Ms. Gigantes wants to have the floor for a moment on this point.

Ms. Gigantes: Mr. Polsinelli may be missing the purpose of the change and getting caught up with the mechanics of how the change is proposed.



Let me ask a question of Mr. Gillies. When I look at your subsection 3(2) and your subsection 5(2), what I am understanding--correct me if I am wrong--is that once you have made a comparison using a representative job level, and however that comparison is done, and you discover that for the representative job level there is a need for an increase, and that representative job level reflects the one with the largest number of employees, then you are going to apply the same adjustment across the job group for each level.

I would like you to think about that while we have the opportunity, because it may be that we will want to have different levels of compensation and we had best leave that to negotiations in organized situations. For example, when you think of the OPSEU brief and what they told us about who they would address in a negotiating situation with the government and how they wanted to be able to address the lowest-paid employees quickly in a forceful way, perhaps it would be better if we did not look for a mechanical application of an X per cent increase across the job group for each level.

Mr. Gillies: Your preference would be to leave somewhat more flexibility for the bargaining agent in that case?

Ms. Gigantes: Yes. In fact, our amendments are directed to that.

Mr. Gillies: That is a good point, and we are willing to look at that in terms of our amendment.

Mr. Chairman: Perhaps we can proceed then. Dr. McAllister.

Dr. McAllister: We have already dealt with subsections 5(3) and 5(4) in dealing with the definition section; so I will move along to section 6.

Mr. Polsinelli: Sorry to interrupt, Dr. McAllister, but I have one further question of Mr. Gillies.

Your clause 5(3)(b) basically deals with the contracting out. I am sure you are aware that out of the 838 municipalities in Ontario, more than 50 per cent have 10 employees or fewer and that all, if not most, of their work in municipal services is contracted out--things such as garbage disposal. What evidence would those companies that are doing work with those municipalities have to bring to the municipality to comply with this legislation? Would a declaration from them be enough, or would they have to implement pay equity plans and fulfil the terms of the legislation to be in compliance with it?

Mr. Gillies: That is an excellent point. I would think that in the interim, until such time as your colleague Mr. Scott's bill comes into effect, which would presumably take care of the whole problem anyway, what we are talking about is an interim problem that I anticipate would exist only until such time as your government's stated intention to bring pay equity into the private sector is dealt with.

In the interim, I would think something could be worked out, especially for small employers, in terms of some form of declaration confirmed by the commission or something of this sort. We appreciate that many smaller employers, especially employers of two, three, four or five people, would have a great deal of difficulty putting into effect a plan of the sort anticipated by Bill 105, but presumably they would have a much easier time putting a plan into effect as anticipated by any private sector legislation.

17:30

Mr. Polsinelli: I am concerned about the type of inquiries the small employer would have to make before he can satisfactorily swear an affidavit that he is in compliance with the legislation. I cannot see him doing much less than ensuring that all his staff are being paid and essentially that there is not any gender discrimination in his practice. Effectively, it seems to me, this subsection is extending pay equity into quite a large segment of the private sector, and not just the broader public sector. It is not that I disagree with it, but I would like to make sure you understand what it is doing.

Mr. Gillies: We understand quite well, but keep in mind that we are extending it only to those people who wish to do business with the government.

Mr. Polsinelli: As largely defined.

Mr. Gillies: Yes, as broadly defined. You can imagine the difficulties if a clause such as the one we are proposing were not part of the bill. Then any government or agency of any size could contract out work to circumvent the legislation, which is the last thing any of us wants.

Mr. Polsinelli: I am quite pleased to see that your party is wholeheartedly supporting the concept of pay equity in the private sector. I am a little concerned about the immediate implications of this subsection for the small employers. I do not think they will know what it will be doing, but I am happy to see your wholehearted support.

Mr. Gillies: Our leader, Ms. Fish and myself have said repeatedly that our party is in favour of pay equity in the private sector. I am pleased that you have to come to recognize that.

Mr. Polsinelli: Yes, 43 years later.

Mr. Chairman: This is getting to the point where it has been a very stirring revelation on your part, Mr. Polsinelli, and on your part, Mr. Gillies, but I am waiting with some anticipation to hear what Mr. Callahan has to add to this debate.

Mr. Polsinelli: Mr. Chairman, I must confess. It took me 42 years, but I finally support it.

Mr. Chairman: That would not be a political statement of any kind, would it?

Mr. Polsinelli: Of course not.

Mr. Chairman: Since we are not in the position to enter into debate at this time, I will simply let the statement go by and go to Mr. Callahan.

Mr. Callahan: I want to be clear. My colleague makes an excellent statement and Mr. Gillies has recognized it. Let us take municipalities. They tender contracts. This would mean that all the people tendering for a contract, whether or not they were the successful bidder, as a precondition to tendering would have to have brought themselves in line with this proposal. I see that as a terribly difficult thing.



In my view, it would probably anger the private sector to the point where it might decide that it should lobby like crazy to prevent this from getting into the private sector. That would eliminate the final level that we are all trying to achieve: getting to the private sector level.

I say this candidly; that is one of the difficulties I perceive in moving from the narrow public sector to the broad public sector. There is a whole host of these problems, and not just at the municipal level. Universities probably do the same thing. Hospitals, the ski hill, everything we could consider as being in the broader public sector, will be affected by that.

I would like an answer. I thought you were trying to say that there might be some sort of staging on this aspect of it. That might work, but if there is not a staging, I could see how it could literally or potentially destroy the confidence of those out in the private sector who are doing business with these bodies in being able at some stage to accept the question of the enlargement to the private sector.

Ms. Gigantes: What could be more staged than contract compliance?

Mr. Callahan: No, no.

Ms. Gigantes: I am not arguing in favour of it, but it sure is a stage.

Mr. Callahan: I would like to get an answer from Mr. Gillies, because if he cannot give me some way that we can overcome that difficulty, and I suggest that--

Ms. Fish: Then a private sector bill.

Mr. Callahan: That is fine, but with respect, I suggest you will fall into that trap by attempting to expand it from the narrow public sector to the broad public sector. All in one shot, you will fall into that trap.

Mr. Chairman: The question is fairly clear to me, and Mr. Gillies wants now to respond.

Mr. Callahan: Okay, fine.

Mr. Chairman: I would like to move on with the bill. I have the question. Mr. Gillies, I am sure you have it too.

Mr. Callahan: Okay. Will he tell us what his answer is? Maybe he can tell us later what his answer is, but I do not see that there is one.

Mr. Gillies: I can be very brief in response. We believe contract compliance is a necessary feature of this bill. We take at his word the Attorney General (Mr. Scott), the minister responsible for women's issues, when he says he will be introducing legislation for the private sector this fall. I assume Mr. Callahan and his colleagues support that initiative. Therefore, I cannot understand why they would be concerned about our ensuring that those people who contract with the government do not discriminate against their female employees.

Mr. Callahan: What happens during the hiatus, though?

Mr. Gillies: What hiatus?

Ms. Fish: What hiatus? Your minister is bringing the bill in post-haste.

Mr. Callahan: If this is brought back and passed before the spring session, then you have a hiatus. I suggest that hiatus would be enough to cause consternation in the private sector so we will not achieve what I think is the attempt of all members of this committee to bring that equity, that fairness and that justice to these people.

Mr. Chairman: Perhaps a definition of "fall" would be of help to us.

Mr. Callahan: I just warn you about that because I see that as a very real concern. If it does happen, then I say a pox upon your house, because you guys will have caused it.

Mr. Gillies: Apparently, I have more faith in the word of the member's colleague the minister than he does.

Mr. Callahan: We all know how long things can take in the House with filibustering and all the rest of it. We may very well have a very long hiatus.

Mr. Chairman: Having heard this stirring debate, I will now ask the two participants, Mr. Callahan and Mr. Gillies, to cease and desist--

Mr. Polsinelli: If I may raise a point of order?

Mr. Chairman: --as well as Mr. Polsinelli, because I am moving to Ms. Fish at this point. You started the whole thing.

Mr. Polsinelli: On a point of order, Mr. Chairman.

Mr. Chairman: A point of order, Mr. Polsinelli. I know it will be a good one.

Mr. Polsinelli: I am sure the committee members all realize that the legislation before us currently is Bill 105. The Attorney General's commitment to bring in the legislation will be fulfilled in this session. When we are dealing with this bill, we should not be making amendments based on what the Attorney General will be doing. The bill should be self-contained.

If the Tories intend to extend it to the private sector, then they should put in mechanisms to ensure that extension is meaningful and not merely, as the Leader of the Opposition (Mr. Grossman) said, to have bureaucrats coming in and telling private businesses what they ought to be paying people or that we think there is an approach that will work. If their approach is a simple statement without any teeth, then it is ridiculous.

Mr. Chairman: That is a point of view rather than a point of order.

Ms. Fish: I am genuinely disappointed in the engaging of partisan polemic in a period that was supposed to have been a walk-through and a straightforward explanation of the intention of amendments. In case either Mr. Polsinelli or the newly attended with us Mr. Callahan have missed the point, the amendment on contract compliance is one that we consider vital even within the frame of the government's ill-conceived Bill 105. In our view, contract compliance is a fundamental element of coverage of pay equity even in the narrow public service. In our view, it is a clause that should be there in either case, most particularly in the broader public sector, but even within



the narrow confines of the bill as the government has brought it forward.

Mr. Chairman: I will again ask Dr. McAllister to carry on at this point. We are making great headway.

Dr. McAllister: On section 6 and section 7, pay equity plans are the tools for identifying gender discrimination in pay practices and the determination of what redress is required as well.

Section 7 sets out the contents of pay equity plans. As an aside, I will note that when we get to section 12, I will begin the discussion about how pay equity plans are to be developed and implemented. We will deal here only with the content.

I refer you to the government's proposed amendment on section 7 which provides some clarification of the present bill. First of all, it sets out at the beginning what the purpose of pay equity plans is; that is, identification and elimination of gender-biased compensation practices. Without restricting the generality of that, it goes on to lay out the four components that every pay equity plan will have.

Some of the wording simply improves upon the verbs, which I think had led to some confusion, oddly enough, in section 11, which has been said to be confusing enough in its own right. It was not clear from the choice of verbs in the original wording what had to be completed by the time the pay equity plans were filed. You will recall that, for example, in the situation of bargaining unit pay equity plans, they had to be filed three months after bargaining began. The verbs used in the original wording would have made it impossible to satisfy that requirement.

17:40

To go through the contents of pay equity plans, first, they will provide for the development or selection of a gender-neutral job comparison or evaluation system. The choice of the words "job comparison or evaluation system" was intentional, to convey the government's intent that there would not be a requirement for a highly sophisticated and elaborate job evaluation system, which comes to many people's minds, and that it would be very permissive. The system used may be very formal and complex or fairly simple and straightforward as may be most appropriate in particular organizations or as preferred by the bargaining parties.

Second, clause 7(b) provides for the identification of predominantly female and male groups of jobs within the group of employees covered by the pay equity plans.

Clause 7(c) will provide for a description of how the job evaluation or comparison system shall be applied to those predominantly male and female jobs and clause 7(d) shall describe how the rates of compensation are to be adjusted to achieve pay equity.

I should explain what clause 7(d) may be referring to. It has been noted in the committee hearings that Bill 105 provides that there be at least a minimal adjustment to the job rate of the lowest-paid male job of equal value. This would allow the bargaining parties to negotiate a higher rate of adjustment, for example, in formulating a pay equity plan.

The minimal adjustment is permissive. Clause 7(d) would provide that a

pay equity plan could identify more than that minimal adjustment, for example, if the parties in a bargaining unit pay plan or if the employer in a nonbargaining unit pay equity plan determined that approach to implementation was desirable, subject to the approval of the Pay Equity Commission.

Ms. Gigantes: The notion of a negotiated permissive minimum for the adjustment and how that would permit employers and employees to bargain for more, if they so wish, does not thrill me. The likelihood of any employer being willing to do more than the legislation requires is not something we are going to see demonstrated very often. That would be my guess.

If we go to clause 7(d) as amended, we see an amendment which essentially removes the concern I had about the mechanical imposition of X per cent once the representative job level comparison is done.

Dr. McAllister: As I noted earlier, that was moved to clause 5(2)(a) so that the basis of comparison and the achievement of pay equity would be together logically in the bill. As section 5 stood previously--although it suggested that this would indicate when pay equity had been achieved--without making all the final adjustments in rates of compensation to all the job levels within a group of jobs, it would have been short of that. It was reorganized for logistic purposes.

Ms. Gigantes: We are assured that the mechanism is still one that the government proposes.

Dr. McAllister: It is the same mechanism. The second half of clause 7(d) is proposed to become clause 5(2)(a).

Mr. Chairman: Anything further?

Mr. Gillies: Very briefly, we will be moving an amendment to section 6 to remove the gender-predominance feature again.

In section 7, we would have to strike out clauses (b), (c) and (d), again because of the gender-predominance feature, and, as members can see if they care to look at our amendment, we have proposed alternate clauses (b) and (c), which we believe can give effect to clause (a) without the necessity of the 60 and 70 per cent.

Ms. Gigantes: I will just note very quickly, as we move through sections 3 to 5 in the amendments we are proposing, we are suggesting the elimination of the concept of pay equity because, as I mentioned before, it is heavily associated with the achievement of pay equity through a pay equity planning process, as identified in the current bill and substituting, where necessary, the concept of equal pay for work of equal value.

Mr. Chairman: Carry on, please.

Dr. McAllister: Subsection 8(1) eliminates the exclusions from pay equity plans and I would note for you that these positions which are identified for potential exclusion may be excluded in determining gender predominance of any group of jobs and need not be included in a pay equity plan. In other words, these types of positions are not necessarily automatically excluded from pay equity plans.

First, there are positions which have been designated by the employer as a temporary training position, a student position, a rehabilitation position,



a casual position for which there is a further elaboration in subsection 8(2) or a position for which there is a temporary labour shortage, or a position that the commission designates for the purposes of this section. At this time I would refer you to the regulations. Clause 28(1)(d) allows by regulation to describe criteria for determining whether or not a temporary labour market shortage exists.

Mr. Gillies: We will be moving to strike out section 8. As we indicated last spring, our party believes some of those female employees who are the most disadvantaged are represented by the categories enumerated in section 8, and we believe they need the same benefit of pay equity as other female employees within the public sector.

Ms. Gigantes: We are moving the deletion of sections 7 and 8. In terms of substance, what I should have done was indicate that, on section 7, the outline of the mechanism we are proposing and which covers sections 7 and 8, but which would essentially replace section 7 and eliminate section 8, I think the proposals we have made are fairly straightforward. They provide for an initial lump sum to be paid out on the filing of plans and provide that the first adjustments in plans should happen 365 days after the filing, that both should be based on a three per cent of payroll estimate and that the lump sum would be based on three per cent of payroll estimated February 11, 1986, the time of tabling of this bill.

17:50

Also, as outlined in our amendments, it provides, as I mentioned before, that in organized work places we would be looking to the establishment of a joint employer-employee bargaining committee to establish the equal pay plan. In an unorganized work place, the employer would have the responsibility of drawing up a plan and filing it with the commission. In each case the commission would review the plans and in each case would ultimately deal with complaints about the creation of the plan or the failure of the plan to provide equal pay for work of equal value.

Mr. Callahan: I would like to ask Mr. Gillies, with reference to his deletion of section 8, how he would propose that a municipality might deal with summer help, how a school board or a municipality might deal with shovelling sidewalks, which is a temporary labour situation, how it would deal with workers' compensation cases where a person was injured on the job and was required to return under a rehabilitation position. It gives me some concern that he will have extreme difficulty, first, taking it out and, second, addressing it to the broad public sector, although I suppose it would be equally relevant to the narrow public sector.

Clearly, it would be untenable; these types of items that would be joined by the broad public sector would be devastated. You will have a lot of people knocking on your door, Mr. Gillies, because of the tremendous constraints you will be placing on the municipality, the university, the hospital or whatever, because of the elimination of that.

Mr. Gillies: In direct response to the question, the organizations my friend mentioned would deal with those types of employees he has just enumerated in exactly the way they would deal with all their other employees.

Further, and perhaps a little philosophically, I do not approach pay equity as a mechanism designed to further enrich the privileged. I see it as a way of reducing discrimination and perhaps, in so doing, passing on the

benefit to those who are lesser privileged than the average. I believe that many of those are the types of people, as Mr. Callahan has indicated, who are returning to the work force after a period on compensation, who are in a training position to try to enter the work force on a permanent basis and who are in a temporary position in the hope of gaining permanent employment in the same field for which they are being trained.

I remind my friend that pay equity is not designed to compare a part-time student with the executive director of the branch and bring their salaries into line. All it is intended to do is to ensure that there is not gender-based discrimination within that type of work. I am sure my friend Mr. Callahan would not want there to be discrimination between male and female students, for example, who are working for the same employer and performing comparable types of work. I am sure he would not want that; so I do not think it is a big problem.

Further, I do not think that in most instances public sector employers do discriminate between their male and female summer or casual employees. I would not be too alarmed. I think the aim of what we want to achieve here is both good and legitimate, if we really think about it.

Mr. Callahan: I accept what you are saying, and it certainly is the principle we are all being guided by, but if you project this out--I have given some examples; I am sure there is a whole host of them where problems would arise from the elimination of section 8. Probably more significantly, and I know we are not talking about the private sector bill at this point, I think you would probably find a lot more difficulty in getting that through to the private sector with that eliminated. That is where, again, I think the difficulty in moving to the broad public sector in this bill is a mistake.

As I said before, I know you are trying--and I think we are all trying to do the same thing--to create justice. However, in trying to move two things at once, we are creating difficulties that perhaps we do not even foresee at the moment. Certainly, by taking out section 8, I think you are creating a whole host of problems that surface in my imagination and my mind about what could happen in the broader public sectors.

Mr. Chairman: With respect, could I again caution the members to try to avoid entering into personal positions and debate on the issue. I am allowing a degree of flexibility because I do not want to cut you off, but in some of the answers and responses we are going beyond just a question and answer.

Let us go back to the staff for comment at this point. Dr. McAllister, I believe you have some further explanation you want to give regarding section 8.

Dr. McAllister: I just wanted to provide a clarification following from Mr. Gillies' discussion. I should point out, so that it is clear in the members' minds, that this refers to the designation and the exclusion of positions from pay equity plans, not the exclusion of employees who have particular characteristics.

For example, if you have a position that is normally filled by a secretary, it has a particular rate of pay and it may be filled while that secretary is on summer holidays for two weeks. That position would not be excluded from pay equity because the secretary was away for two weeks. The rate of pay for a position would be established under the pay equity plan. The impact of having exclusions based on positions rather than on characteristics



of particular types of employees is that you have far fewer exclusions under pay equity plans.

I want to twig your minds that the word "position" is quite deliberate and would have a particular impact, for example, if you have students who are coming in the summer to fill a regular position. Let us say I went on holidays for two months every year and my position was always filled by a student. Unless for some reason my position were to be designated as a student position, the rate of pay for that position obviously would remain the same. The position of being a policy analyst has a rate of pay. It does make a difference in terms of coverage under the pay equity plan.

Ms. Gigantes: That may well be so, but it does not meet the question of why one would not evaluate male and female positions, whatever they are categorized as.

Dr. McAllister: No. I want to point out that there is some discussion about excluding student employees or particular types of employees, and I want to clarify that the exclusions are of positions and not of employees who have particular characteristics.

Mr. Chairman: Before we proceed, members of the committee, we are scheduled to continue until 6:30.

Mr. Polsinelli: Six-thirty?

Mr. Chairman: The House does not close until 6:30; so this committee goes until 6:30. There being some question as to how long we will be going on, is it your wish to finish off this committee at six--and it is the committee's decision--or do you want to proceed through till 6:30? There were some who thought we were going until six, and I know there are some other commitments at six o'clock. It is your call; whatever you wish.

Mr. Polsinelli: I must apologize to the committee, but I was convinced we were ending at six tonight and I do have a fairly important appointment. It is not just myself; I understand some of the ministry staff also have commitments.

Ms. Gigantes: Mr. Chairman, we have standing orders and they say that 6:30 is the hour.

Mr. Chairman: I pointed that out--

Ms. Gigantes: I have arranged my life around 6:30, as it turns out, because that is the standing order.

Mr. Polsinelli: I will be leaving in five minutes and I believe Dr. McAllister will be accompanying me. The committee is free to continue if it likes.

Mr. Chairman: We may have some difficulty getting a walk through the bill without the walkee and the walkers all being here. I am raising the question to determine what the committee wishes to do in view of the additional information that Dr. McAllister--

Ms. Fish: What is the pressing engagement that takes staff away from the committee on discussion of a bill which that staff is responsible for?

Mr. Chairman: I am not in a position to--

Ms. Fish: Through you, Mr. Chairman, to Dr. McAllister.

Dr. McAllister: I must apologize, Ms. Fish. I had been advised that the committee sat until 6 p.m., and I will have to phone a day care to make other arrangements. I can step out of the room for five minutes, if that will be all right with the committee. I did not make--

Ms. Fish: At this point, I think it is probably going to be a problem to go and do that.

Mr. Gillies: If Dr. McAllister has her children to take care of, that is quite understandable. As I heard behind me, the only alternative would be for Mr. Callahan to walk us through this bill; so with that in mind, I will be happy to adjourn.

Mr. Chairman: Motion to adjourn.

Mr. Polsinelli: Mr. Gillies, I will second that.

Mr. Chairman: Agreed. Carried.

The committee adjourned at 6:02 p.m.



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CONFIDENTIAL

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

TUESDAY, OCTOBER 21, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

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Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Substitutions:

Gillies, P. A. (Brantford PC) for Mr. O'Connor

South, L. (Frontenac-Addington L) for Mr. Callahan

Clerk: Mellor, L.

Staff:

Ward, B., Research Officer, Legislative Research Service

Revell, D. L., Legislative Counsel

Witness:

From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy  
Minister, Labour Policy and Programs



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, October 21, 1986

The committee met at 3:58 p.m. in room 228.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

The Vice-Chairman: Dr. McAllister reminds me that she had completed the explanation of subsection 8(1). We are about to go on from there. Perhaps, Dr. McAllister, you might want to review in brief the explanation in subsection 8(1) and then continue on through section 8 before we turn to hear any explanation of any amendments that may be put.

Ms. Gigantes: Before we begin, I note that we have received from our research staff a partial answer to the questions raised in the correspondence from the Canadian Federation of Independent Business. I would like to thank staff. It is a very clear explanation of the data we received. All of us should take a good look at it in case those figures are presented again.

The Vice-Chairman: Thank you, Ms. Gigantes, I was in error in not drawing the material to the attention of committee members. It is under date of October 21, from Beth Ward, our research officer, legislative research.

Mrs. Ward: I have just noticed an error. I wondered if I could make note of that. It is point 4 on page 2.

The Vice-Chairman: Committee members, will you turn to page 2, point 4, under "Analysis" in the memo from the legislative library, legislative research. It says, "The data presented by...."

Mrs. Ward: I am sorry. It begins, "According to the Business Microdata figures, 55 per cent of the total number of employees are male and, collectively, they earn 60 per cent...." It should read 69 per cent, not 60 per cent. Thank you.

The Vice-Chairman: Does everybody have that? Under the third point beginning, "According to the Business Microdata," where you see 60 per cent in the second line, it should be 69 per cent. Is everybody together?

Dr. McAllister: Yesterday we had proceeded through subsection 8(1), which lists or enumerates the positions that may be excluded in determining gender predominance for groups of plans and need not be included in a pay equity plan. However, we did not get to subsection 8(2), which provides some assistance in identifying or defining what a casual position is.

To assist you in understanding it more clearly, positions may be designated as casual if the work is performed for less than "one third of the normal work period that applies to similar full-time work," if the work is performed on an irregular or noncontinuing basis or if the work is performed

only seasonally and not "in the same position for the same employer." To identify a casual position, it helps to turn it around in a positive way rather than stating it in the negative as it unfortunately is in the provision in the bill. It would have to be a rather irregular sort of position with a very limited time component in an employer's organization.

Ms. Gigantes: Reading clause 8(2)(a), as I understand it, that means if you work for less than four months of the year, equal pay provisions might not apply to the position you fill.

Dr. McAllister: It would also depend on further characteristics of the work, of course, but that could be one of the considerations.

The Vice-Chairman: Are there any other questions on subsection 8(2)?

Dr. McAllister: Section 9 prohibits the reduction in the rate of compensation paid to any employee or the rate of compensation for any position in order to achieve pay equity.

Ms. Gigantes: I think both opposition parties have amendments. Certainly, we have amendments that would add what we feel is the necessary restriction that red-circling and the holding down of wages will also be prohibited.

Mr. Gillies: Actually, we do not have an amendment on it, but that does not mean we are not open to such an amendment.

The Vice-Chairman: Are there any questions? Section 10.

Dr. McAllister: Subsection 10(1) provides that the provisions of a pay equity plan and any amendments to it, any orders and directions of the Pay Equity Commission, will be binding "upon the employer, the employees in the positions to which the pay equity plan applies and the bargaining agent, if any, of the employees."

Subsection 10(2) provides that the adjustments required for the provision of pay equity shall be incorporated into the relevant collective agreements and any further collective agreements entered into during the proactive implementation of pay equity and that the agreements shall be amended accordingly. In other words, the adjustments shall prevail over those indicated as required in existing collective agreements.

Ms. Gigantes: Does prevail mean in addition to?

Dr. McAllister: I take the word to mean, in a sense, override.

Ms. Gigantes: Can you give us an example?

Dr. McAllister: If the rate of pay for a particular job was listed in a collective agreement as being \$10 an hour and the pay equity plan said that the rate of pay for that job should be \$12 an hour, then the collective agreement would be amended to read \$12 an hour. In that sense, it would override or replace--I do not think it would so much be in addition to because the \$10 would no longer be a relevant piece of the collective agreement of the collective agreement.



Subsection 10(3) simply carries on in that principle so that any additional amendments to pay equity plans that may be directed or ordered by the commission--for example, during the complaints phase of the proactive program--would also prevail over the rates of pay in a collective agreement.

Yesterday I indicated it would be my preference to proceed from section 10, past section 11 to section 12. The reason is that sections 12 through 16 set out the process for the development and selection of pay equity plans. I feel it may be easier to understand the entire process if we deal with that before we get to the staging for adjustments under pay equity plans. If you are still in agreement with that, I will proceed.

The committee clerk is passing around a diagram that I hope will help in the explanation of these provisions. I will wait until you have received it before beginning the discussion.

This is simply a diagram or a flow chart that shows, for the pay equity plans to be developed under parts III to VI of the bill or sections 12 to 16, exactly how the staging is to occur. The time lines are divided into three-month periods starting with the effective date, which will be the date upon which part II of the bill will come into play. Perhaps before giving detailed or careful consideration to the provisions in the bill, we can just refer to the diagram and see if we can get an overview sense of the process before looking at the legislative language that is required for that process to take place.

I note we have made a mistake on the first line of the left column. It should read "effective date" not "proclamation date."

Ms. Gigantes: Can we have an answer to the question asked yesterday about how long it will take to set up an equal pay commission?

Dr. McAllister: The answers to that question and your other questions are not available yet.

As you may recall, the bill provides that there will be separate pay equity plans developed for each bargaining unit and for the nonbargaining unit or management unit beginning at the same date. In part II, the parties, the bargaining agent for each bargaining unit and the employer, are required to attempt to negotiate in good faith the development and/or selection of a pay equity plan. I remind you that the components of a pay equity plan are enumerated in section 7 of the bill.

We have provided three months for negotiation. If, at the conclusion of three months, the parties have been unable to agree to a pay equity plan, then we provide three months for a single arbitrator to examine the issue and make a determination. Of course, the parties may very successfully conclude a pay equity plan within three months and then arbitration will not be necessary.

In the public service, which is covered by the bill at present, only two of the organizations covered have more than one bargaining unit. The Civil Service Commission deals with the Ontario Public Service Employees Union and the Ontario Provincial Police, and the Ontario Housing Corp. has bargaining relationships with OPSEU and a local of the Canadian Union of Public Employees. There will be a maximum of five pay equity plans within any individual organization covered by the bill.

We have provided 18 months for the employer to apply each of the bargaining unit pay equity plans separately. To apply a pay equity plan essentially means to undertake or carry out the job audits that will be required in comparing the relative pay and the relative value of the predominantly male and predominantly female groups of jobs that have been identified in the pay equity plans.

On the same date as bargaining has begun for the separate pay equity plans for the bargaining units, the employer is required to select or develop a pay equity plan to cover all of the nonunionized employees in the establishment. I have referred to this here as the management plan. The employer has three months to do that and 18 months after filing with the commission to apply the pay equity plan to those employees.

Now I refer you to part V of the flow chart, which is the provision for the cross-union pay equity plan. Once each of the separate pay equity plans has been filed with the Pay Equity Commission, the employer and all of the bargaining agents are required to sit down together and attempt to negotiate a pay equity plan that will cover all of the bargaining unit employees together. We allow six months for that process to take place.

If they are unsuccessful in negotiating a pay equity plan, we have provided a further six months for arbitration. I should note that in the instance where arbitration is required and the arbitrator is unsuccessful in meeting the three-month and six-month time lines respectively, the bill provides that a further arbitrator will be appointed by the minister to examine the matter and arrive at some resolution.

Once the cross-bargaining-unit pay equity plan has been developed, through either negotiation or arbitration, we allow a further 12 months for the employer to apply the pay equity plan and to undertake any job audits that may be required.

Part VI takes us to the comprehensive pay equity plan, which will entail the employer giving consideration to all the predominantly male and predominantly female groups of jobs within the organization. The employer is required to begin development or selection of that organization-wide or comprehensive pay equity plan at the filing of the separate bargaining pay equity plans, which most likely will follow the conclusion of his or her development of the management plan and will also coincide with the beginning of negotiations for the cross-bargaining-unit plan.

The employer has 18 months to work on the development of a comprehensive pay equity plan for all employees and, upon filing of that plan, has a further 12 months to undertake the job audits that may be required.

Are there any questions about the flow chart before we get into the particular provisions of the bill?

Ms. Gigantes: Can I go back over the item you just spoke about? You said the employer has 18 months to begin to develop the organization-wide plan?

Dr. McAllister: Yes.

Ms. Gigantes: The chart indicates that this ends possibly at 24 months, but that is 18 months minus three months. Is that it?

Dr. McAllister: That is 24 months minus six months.



Ms. Gigantes: It is 24 months minus six months. Right?

Dr. McAllister: Yes, in that it begins approximately six months into the piece. Of course, the beginning of the requirement on the employer to work on the organization-wide pay equity plan coincides with the filing of earlier pay equity plans.

Ms. Gigantes: Yes, I understand.

Dr. McAllister: If there is an extension in time or if, for example, the parties were to conclude negotiations extremely expeditiously, then that time period would begin earlier.

Ms. Gigantes: All right, but the question I want to get back to is, from the date of proclamation, we do not know from the bill what the effective date will be.

Dr. McAllister: That is correct.

Ms. Gigantes: Therefore, in the the completion of part VI, the employer, in consultation with the unions, develops the organization-wide plan. We are talking about 24 months from the effective date. There may have been a period from the date of proclamation of the bill before the effective date; so we are looking at payments that would go beyond the 24-month period from the proclamation of the bill.

Dr. McAllister: That is correct.

Mr. Chairman: Are there any further questions on the chart that is before you?

Dr. McAllister: Perhaps I should point out that because the time periods are set out in terms of there being 18 months for the employer to apply certain plans or 12 months to apply other plans, the starting date for the application is contingent upon the earlier time lines for negotiation by the parties, arbitration or initial employer development. The first step of the process has to be completed before the employer will be required to apply. This should be taken as an indication of how the orderly process should occur. It could occur at an earlier date or, you are quite correct, the dates could be a bit later. It could be more than six months; it might be nine months.

Ms. Gigantes: Even without arbitration.

Dr. McAllister: Yes.

Ms. Gigantes: In any of these stages. We are looking at proclamation of the bill and 24 months later plus the difference between the date of proclamation and the effective date. That is the total time period before any payouts under this bill would occur.

Dr. McAllister: One could not say that with absolute certainty. If the parties were able to conclude their negotiations very expeditiously and if the employer were able to apply the job evaluation or comparison system required under the pay equity plan more expeditiously, payouts could conceivably begin earlier.

Ms. Gigantes: However, the requirement of the bill is no faster than that.

Dr. McAllister: That is right. The employer is not required to do it sooner than that. In terms of the amount of time the employer is allowed to apply the plans, that is correct.

Ms. Gigantes: I do not know whether people have questions about that. I can mention our amendments dealing with these sections when other people's questions on that are complete.

Mr. Chairman: I asked for questions once, and there did not appear to be any. Perhaps Ms. Gigantes could go forward now with her party's position on these time frames.

Ms. Gigantes: Our amendments are laid out on four pages that are headed "Parts 3 to 6 Covering Sections 12 to 16." They lay out a different scheme. They clearly identify what happens in a unionized work place and in a nonunionized work place. It sets out the scheme to which we referred yesterday, essentially within 30 days of the date of proclamation of the bill. We make no differentiation between the date of proclamation and the effective date of the bill; they are one and the same in our proposals.

In a unionized establishment, a joint bargaining team made up of equal members of union, employee and employer representatives would negotiate a plan to be filed with the equal pay commission within 120 days. The commission would deal with any failure in that process.

In a nonunionized establishment, we are proposing that management or the employer have four months from the date of proclamation of the bill to file an equal pay plan with the commission.

In both cases, we are providing that the workers have full information about the ingredients on which the plan is based--payroll, job classifications and so on.

In terms of the implementation, we expect employers in both the unionized and nonunionized establishments will pay out to the lowest-paid employees in predominantly female jobs--however that is determined in the work place--what we have called a lump sum reckoning based on three per cent of the total payroll calculated from February 11, 1986.

The first adjustments under the plans filed with the commission should be made 365 days after the filing of the plan. The plan is filed immediately with the commission, and there is a payout 365 days later. That would be the first payment under the plan.

This is a substantial amendment to the basic mechanism of Bill 105. I hope members of the committee will look at it in the light of submissions we had from a large number of individuals and organizations who found the basic mechanism of Bill 105 to be overly complicated and drawn out.

16:20

Mr. Chairman: Dr. McAllister, I have a question with respect to the budgeting for this program, which may have some impact as a result of what Ms. Gigantes has just explained. As I understand it, the proposal on the part of the ministry in this bill is for an expenditure of \$88 million over four years.

Dr. McAllister: That is correct.



Mr. Chairman: If the time frames were altered substantively, in all probability that would change, if not the total amount of money, at least the flow of cash; it might move it up more quickly, as an example. Is the \$88 million broken down into a four-year period, or are you aware of what the ministry has proposed by way of a pro forma budget?

Ms. Gigantes: It is.

Dr. McAllister: She has answered the question.

Mr. Chairman: Maybe I should redirect the question to Ms. Gigantes.

Dr. McAllister: Yes. It is anticipated that the pay equity gap, which we estimate to be approximately four per cent of payroll, or \$88 million, will be closed over about four years, because there is a one per cent of total compensation adjustment requirement on the employer. That requirement occurs in section 11, which I have deferred because I thought it made more sense to talk about the process of developing the plans before we discussed the adjustment. It would mean that one could make the pay equity adjustments over about four years.

I do not think the difficulties in terms of the financial commitment to the government are probably so much in terms of shortening the period of payout but rather adding retroactivity, which has a significant increase on the costs of the program.

Mr. Chairman: What is the proposed payout over four years?

Dr. McAllister: It would be \$88 million over four years, with an ongoing cost of \$88 million. In other words, if the pay equity gap at this time is identified to be four per cent of payroll, or \$88 million, once you have concluded the proactive pay equity adjustments, you have an ongoing total payroll cost of \$88 million.

With the first adjustments to payroll, which will be required under this program at approximately the 24-month mark give or take months on either side, there will be a requirement of two per cent of total payroll being put towards those adjustments. That is because, in the provisions for section 11, the one per cent per year of previous years' payroll requirement on the employer begins with the effective date. Therefore, a two per cent liability will have accumulated by the first adjustments. Two per cent of payroll or \$44 million will therefore flow.

With the next pay equity adjustments, which will be required a year later, a further one per cent of total payroll or \$22 million will be added. In that year, the employer will already be paying the first \$44 million plus the \$22 million that is added for those adjustments. The next year, the third per cent of payroll comes into play and is added on to the previous adjustments that have been made; so you cumulatively get to your four per cent of total payroll, and the ongoing cost is \$44 million. Over the proactive period you have paid out \$88 million in pay equity adjustments and you have an ongoing cost of \$88 million.

Mr. Chairman: Annually?

Dr. McAllister: Yes; on an annual basis, every year.

Mr. Chairman: Is that broken down into the first, second, third and fourth years of the plan?

Dr. McAllister: The flow of adjustments?

Mr. Chairman: No, the actual cash requirements. What would the cash requirement be in year one?

Dr. McAllister: The cash requirements on the government up until approximately year two, when the first adjustments begin, would not be for pay equity adjustments but rather for the administration of the Pay Equity Commission. There would be administrative costs, but there would be no costs to the coffers of the province, because no pay equity adjustments would be flowing under Bill 105.

Mr. Chairman: Okay. If there is nothing further, we can move along.

Dr. McAllister: I refer you to subsection 12(1), which sets out the requirement that the employer and each bargaining agent within the employer's organization shall negotiate in good faith and endeavour to agree on a pay equity plan to provide pay equity in predominantly female groups of jobs in each separate bargaining unit relative to the predominantly male jobs within each bargaining unit.

In other words, the scope of comparisons within each pay equity plan initially will be with other predominantly male groups of jobs within that pay unit.

Subsection 12(2) requires that the pay equity plan shall be in writing and executed, which is essentially formally signed or formalized by the employer and the bargaining agent. After the execution of a pay equity plan, the employer is required to file a copy of it with the Pay Equity Commission.

When we get to later sections of the bill, we will be going through the particular functions and role of the commission. We can perhaps leave that aside at this point.

Subsection 13(1) provides that if the employer and the bargaining agent have been unsuccessful in concluding an agreement with respect to pay equity, either party may refer the matter to arbitration, giving notice to the minister, or may file a notice with the minister to the effect that they have been unsuccessful.

Subsection 13(2) provides for the minister to appoint a single arbitrator to examine the matter and make a determination within 90 days to conclude a pay equity plan. Of course, I presume it is perfectly conceivable that the matters that may go to arbitration may in some instances include all components of the pay equity plan; there may also be situations where the matters that unfortunately have to be referred to arbitration have to deal with perhaps only one or two components of the pay equity plan upon which the parties have been unable to agree.

After the arbitrator's decision, the employer and the bargaining agent are to prepare and execute a document giving effect to the decision and any agreement between the employer and the bargaining agent.

Subsection 13(4) then constitutes a pay equity plan when executed, and the employer shall file it with the commission; so it then is filed with the Pay Equity Commission. Of course, it is only upon filing with the Pay Equity Commission that the Pay Equity Commission becomes involved in the review of pay equity plans.



Subsection 13(5) through essentially to subsection 13(7) provide mechanisms for the process to proceed in the event that the employer and the bargaining agent do not go about their business and properly execute the plan that has been developed or perhaps added to by the arbitrator.

16:30

Subsection 13(8) simply confirms that whatever document has finally been executed constitutes a pay equity plan and that the employer shall forthwith after its execution file a copy of it with the Pay Equity Commission.

In the event that it is not executed fully, in subsection 9 there is the provision that it still does constitute a pay equity plan as though it had been executed and filed forthwith by the arbitrator with the commission.

It is an elaborate process to ensure that this pay equity plan finally makes its way to the Pay Equity Commission for filing in the event that the parties do not proceed expeditiously.

Subsection 13(10) provides that if the arbitrator for one reason or another seems to be unable to make a determination within 90 days from his or her appointment, the minister may dismiss the arbitrator and appoint another single arbitrator to deal with the matter or may require the Pay Equity Commission to establish a pay equity plan.

Mr. Chairman: Could we hold there?

Ms. Gigantes: If I am reading section 13, in particular, correctly, on subsection 7 we do not have a time identified. Presumably it would not be a lengthy period of time that might pass--

Dr. McAllister: I am sorry. I cannot hear you.

Ms. Gigantes: Presumably, the amount of time that might pass in the application of subsection 13(7) would not be very long, but there is no time identified there.

Dr. McAllister: Not that I can identify immediately. I think you are correct.

Ms. Gigantes: And in subsection 13(10), what we are looking at without really saying so is the possible addition of another 90 days or more.

Dr. McAllister: Or less; whatever.

Ms. Gigantes: But the possible addition of 90 days at least, because the arbitration process may be assumed to have failed after 90 days, and then something else has to happen under subsection 13(10). And the length of time for that something else to happen is not identified.

Dr. McAllister: That is correct.

Ms. Gigantes: If I count up all the times under section 13--subsection 13(1), 90 days; subsection 13(2), 10 days plus 90 days; subsection 13(3), plus 10 days; subsection 13(7), an unidentified though likely small period of time; subsection 13(9), 10 days; and subsection 13(10), 90 days plus--they come to about 300 days.

How can you say you are going to be able to accomplish part III, applying the bargaining unit plans, by the six-month time line, when looking at section 13 we can establish that it can run up to almost a year? It can. I am not saying it will; I am saying it can.

Dr. McAllister: I would say you are essentially correct in terms of the act providing particular points of time for administrative processes to take place.

Ms. Gigantes: Then this point is worth noting, that while this graph showing the phasing of implementation is helpful to our understanding of how the portions of the main mechanism of the bill come into place and the rhythm with which they come into place, the tempo that is assumed under section 13 could be a lot slower than the graph indicates.

Mr. Chairman: That could be a very extreme case.

Ms. Gigantes: I do not know how extreme the case may be; we have no way of knowing. I do not think it is very realistic for us as members of this committee to look at section 13 and say, "However complex it is, it is going to be over and into the implementation phase at six months after the effective date, however long the effective date is after the date of proclamation." We could be looking--

Mr. Polsinelli: This is an awful long question, Ms. Gigantes.

Ms. Gigantes: This is not a question.

Mr. Polsinelli: I thought that was what we were supposed to be doing.

Ms. Gigantes: Perhaps you should remember that yesterday you requested that we have some discussion of amendments, and I believe the comments I am making relate both to the problems I see in the major mechanism of the bill--

Mr. Polsinelli: I know.

Ms. Gigantes: --and in the reasons for putting forward amendments to that mechanism.

Mr. Polsinelli: I am not disputing the comments you are making. I do not want to discuss the comments you are making.

Ms. Gigantes: What are you disputing?

Mr. Polsinelli: It is just that you are going to have to make them again next week.

Ms. Gigantes: I am asking the people on this committee to take a look at our amendments before next week. I would like to give them some sense of why I consider them very important.

Mr. Polsinelli: Go ahead then.

Ms. Gigantes: We have to look at the mechanism. We look at this graph as an aid, but certainly not as a demonstration of how the bill is going to work.



Ms. Fish: I wonder whether Dr. McAllister has any further response to the adding up of time and the concern Ms. Gigantes has raised.

Dr. McAllister: The only point I will make is one that came up earlier. The flow chart gives one a sense of how the processes are related in terms of time and the lengths of time set out in the statute for negotiation, application, etc. In the bill, fairly detailed consideration has been given to what would be required in the worst-case scenario where, for example, the parties do not execute plans as required and arbitrators do not notify the minister and so on and so on. It is correct that if one considers the worst-case scenario and is also intent on having some sense of due process and a specified period of time for people to comply with the requirements, you add up a significant number of days. I am not attempting to deny that is the case and I think the point Ms. Gigantes has made is well taken.

Would you like me to proceed with subsection 13(11)?

Mr. Chairman: Yes.

Dr. McAllister: It has to do with the remuneration to be paid to arbitrators being fixed by the Lieutenant Governor in Council, subject to the approval of Management Board, and their reasonable expenses. Powers of the arbitrator in clauses 13(12)(a) through (e): I refer you to a government amendment for clause 13(12)(a) that removes some unnecessary wording so that the arbitrator has the power "to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath." The wording after the comma is felt to be unnecessary.

In any case, the arbitrator has the power to summon the attendance of witnesses, administer oaths, accept written and oral evidence, enter work premises and authorize persons to do anything the arbitrator may do under clause (d) and to report it to the arbitrator. They have fairly wide-ranging powers consistent with labour arbitrators.

In subsection 13(13), "The Arbitration Act does not apply to arbitrations under this act," it is my understanding that arbitrations under the Labour Relations Act are not covered by the Arbitration Act either.

Part IV, "Non-Bargaining Unit Pay Equity Plans." At the same time as the employer is negotiating with the respective bargaining unit or units concerning pay equity plans, the employer is also charged to set out and develop or select a pay equity plan to cover the nonbargaining unit or management employees. I should note for those people who are familiar with the civil service that the nonbargaining unit pay equity plan would also include people who are categorized as "excluded."

In other words, I often refer to it as "management," but there are three categories of employees: bargaining unit, excluded and management. The nonbargaining unit pay equity plans cover people who are casually referred to as management and excluded categories of employees.

16:40

In any case, a pay equity plan for those employees would have to be developed or selected by the employer within a three-month period. The employer is charged under subsection 14(2) to notify all employees of the date upon which the plan was filed with the Pay Equity Commission.

We have a government amendment to subsection 14(2) which requires that the employer post a copy of the plan in a prominent place within the work place so that the employees will have ready access to the pay equity plan.

Subsection 14(3) provides that if the employer fails to comply with either subsections 14(1) or 14(2) then, in our amendment for subsection 14(3), any employee or employer may give notice of such fact to the commission.

Part V sets out the process for negotiation and, if necessary, arbitrating the combined bargaining unit pay equity plans. Six months are provided for the negotiation with the unions, jointly, for pay equity plans covering all the predominantly male and predominantly female groups in the establishment. The same requirements as in section 13 apply with respect to pay equity plans having to be in writing and executed by the parties and filed with the Pay Equity Commission.

Subsection 15(4) provides that if the parties fail to agree within 16 months on a pay equity plan, there shall be the provision for a single arbitrator to resolve the difficulties, and six months for the arbitrator to resolve the difficulties.

You will note that the time periods are extended slightly in subsection 15(5) from those that pertain to separate bargaining unit pay equity plans.

Finally, under part VI, there will be the development by the employer of a comprehensive pay equity plan which will cover all the employees in all the predominantly male and predominantly female groups within the establishment.

The employer has 18 months to work on the development or selection of the pay equity plan, in consultation with the bargaining agents. The "if any" is somewhat redundant because there are bargaining agents in all the organizations covered by Bill 105. The employer is required to prepare a written plan to provide pay equity both across bargaining units and inside and outside the bargaining units. There is wording to indicate that there will be a requirement that comparisons take place across all the separate pay units within an organization. The employer is required to file a copy of this with the Pay Equity Commission.

Again, in subsection 16(2), there is a government amendment requiring the employer to notify the employees that the plan has been filed with the commission and to post a copy of the plan in a prominent place at work.

Subsection 16(3), with a minor government amendment, provides that an employee or bargaining agent who believes that the employer has, in fact, contravened subsection 16(1) or 16(2) may notify the commission of the alleged contravention.

Ms. Gigantes: I just draw to the attention of the committee members that in part VI the organization-wide plan might not occur until 30 months and a few days beyond the effective date, whenever the effective date was. Therefore, we could be getting up well beyond what a quick reading of this act might suggest, in the worst circumstances provided for in this bill, before there were any moneys paid out to women.

Dr. McAllister: No. Pay adjustments would be flowing from the very first pay equity plans. I guess it is slightly a problem because we have left section 11 until the conclusion of the discussion about the process for the development of the pay equity plans.



The first adjustments will flow from each of the separate pay equity plans for each of the bargaining agents and the separate management unit pay equity plans under parts III and IV--again give or take a few months--at approximately the 24-month mark from the effective date. I guess I could remind the committee that in the organizations covered by the bill there is fairly significant scope for meaningful pay equity comparisons within each of the separate pay equity plans because of the size of the organizations and the characteristics of employment. Thus, it is anticipated in this policy that very significant adjustments will be identified as being required and they will begin to be made at the 24-month mark from the part III and part IV pay equity plans.

You are correct, however, that pay equity adjustments which may be required under part VI--that is to say, the comprehensive pay equity plan--may not conceivably flow until, on this diagram, at least the 36-month mark. That is certainly correct.

Ms. Gigantes: If I may go back just to make sure I understand, under part III we have identified a process that, counting up the time lines through section 13, might indeed not really get under way properly until about the 12-month period after the effective date.

Dr. McAllister: That sounds a bit long, but in any case I will take your point that it could be a bit longer than the six months. Without any question, if there are procedural problems in terms of people not executing plans as required and so forth, that is correct.

Ms. Gigantes: If that is the case, then the payout would begin when? Suppose we did not get a plan under part III and we did not get to apply that plan until the 12-month period after the effective date; when would the payout begin?

Dr. McAllister: If the plan did not begin application until the 12-month period, which I would have to submit would be an extreme case, then the adjustments would not be required of the employer until 18 months after that date, and that would be--

Ms. Gigantes: Thirty months from the effective date.

Dr. McAllister: Yes, that is correct.

Ms. Gigantes: That was the point I was making.

Dr. McAllister: But I should note that earlier adjustments would have begun for the management plan, the part IV plan. The additional times we have been referring to, which add so much to the program, really get built in when you are talking about the bargaining unit pay equity plans when there is provision for arbitration, perhaps a second arbitrator being required and the execution of the plans and so on.

However, at the same time as the employer is involved with the unions in the separate pay equity plans, the employer has also been charged to develop a pay equity plan for the management employees, has three months to do it in terms of developing or selecting the plan and then has 18 months to apply it.

Of course, there are no provisions for arbitration required for the management-only pay equity plan, so even in an extreme case of an employer finding it difficult to develop the plan on exactly the three-month date and

maybe taking a little bit longer, or taking a little bit longer to apply or to undertake the job audits, I do not think in that instance it would conceivably be possible to stretch the date for the first adjustments to 30 months even in the worst-case scenario.

Ms. Gigantes: I understand what you are saying.

Dr. McAllister: So some adjustments will be forthcoming earlier for certain employees.

Ms. Gigantes: In fact, if we are looking at the bulk of employees who might be affected by an organization-wide plan under part VI, it is quite conceivable that the bulk of them, and these would be the lower-paid employees, might not get payouts until month 30 after the effective date.

Dr. McAllister: No, I do not think that would be the case, the reason being, as I have already suggested, that within the public service, because of the size of the organizations, the limited number of bargaining units or bargaining relationships within each establishment and the size of those bargaining units, there will be ample room for meaningful pay equity comparisons. For example, within the Ontario civil service, the pay equity plan for the Ontario Public Service Employees Union will cover almost 80 per cent of employees in the Ontario civil service. They will be included in one pay equity plan that the Civil Service Commission will be involved in negotiating.

16:50

Ms. Gigantes: That will be the pay equity plan that comes under part III initially.

Dr. McAllister: That is correct.

Ms. Gigantes: Under this bill, the planning might take as long as 30 months to come to a conclusion. We might not begin applying.

Dr. McAllister: I would want to check the arithmetic more closely. It strikes me as being a bit long, but I think you do have a very valid point. It could be longer than the 24-month period. I would like to note, in case there is any confusion, that people will receive adjustments from the separate pay equity plans. Whether it is 24 months or 30 months, they will receive adjustments under those plans before they receive adjustments under the comprehensive pay equity plans. I was not sure whether you were suggesting that no adjustments would come until the final comprehensive pay equity plan had been developed.

Ms. Gigantes: No.

Dr. McAllister: Okay, fine. It was a misunderstanding on my part.

Ms. Gigantes: If I suggested that, I spoke wrongly.

Dr. McAllister: It was just a misunderstanding then.

Ms. Gigantes: But you certainly cannot have payouts under part VI until you have payouts under part III.

Dr. McAllister: That is absolutely correct.



Ms. Gigantes: Under the mechanisms provided in these sections of the bill, you can end up with a part III that does not swing into payouts until some time after 24 months and, indeed, close to 30 months, by my calculation.

Mr. Chairman: Would staff members like to work out the arithmetic calculations and get back to Ms. Gigantes?

Dr. McAllister: As Ms. Gigantes has pointed out, the difficulty is that there is no limit in the bill for the length of time in which the second arbitrator is required to report. I could arbitrarily say it would take a further three months for the second arbitrator, but that would be a totally arbitrary number to pull out on my part. I would be quite unprepared to do that.

You could certainly paint a worst-case scenario and assume there might have to be three arbitrators required. I do not think there is any particular way of answering that question in terms of the maximum length of time it could take. It could take for ever if you required five arbitrators to resolve the problem.

Mr. Gillies: I have a brief point. This is very exemplary of one of the central problems with the bill. With respect to those who drafted it, and I am sure they tried to devise a model they thought workable, I do not believe it has to be this complicated.

I will read very carefully and consider the amendment moved by Ms. Gigantes, because I think it may be somewhat more expedient. I have a particular concern, because we will be moving an amendment under section 11 that makes adjustments retroactive to February 11, 1986. The longer the process for adjustment, the more the employers will be hit with very large retroactive adjustment cheques, which I do not think are particularly desirable. I think we should make the process cook along as quickly as we can.

Mr. Polsinelli: I am quite surprised by Mr. Gillies. His mind is quite complex and he has had the aptitude to understand complex problems before. I do not consider this to be a complex problem.

I can appreciate Ms. Gigantes's point that the first adjustment can be past the 24-month period, but that is working on the assumption that the bargaining mechanism fails and that the union fails to negotiate a plan with the employer. It is also working on the assumption that the first arbitrator fails to develop a plan and that the second arbitrator appointed by the minister takes a further three months or takes more than six months. That is where you start getting into the payouts being after the 24- to 30-month period. It is a whole series of events, that are stretching a particular point to--

Mr. Charlton: Is there is a bargaining record in the public service?

Ms. Gigantes: On a point of information, Mr. Chairman: I think Mr. Polsinelli has misunderstood subsection 13(10). I have made no assumption in the calculation I have proffered here of the length of time that the second arbitrator might take. I am saying subsection 13(10) provides that within 90 days of a failure of the first arbitrator--I have not simply added in 90 days. I have made no calculations for the second arbitrator.

Mr. Polsinelli: I agree with you. I think we are on the same wavelength, but we are presupposing that the pay adjustment is not going to be

made within 24 months. You are making the assumption that for the first adjustment not to be made within the 24-month period, the bargaining mechanism has to fail and that no pay equity plan is bargained; there is no consensus reached between the bargaining unit and the employer. You are also making the assumption that the first arbitrator fails to develop a plan.

Those are two very large assumptions to make. I concede it may happen; it may happen in some situations, but they would be the exceptions and not the rule.

Ms. Gigantes: We do not know, when we sit here and look at the bill. We have to look at it in very cold, hard terms and not make any assumptions about how easily it is going to flow or how much difficulty there may be in the flow.

I guess the essential point I am trying to raise in this discussion is that we should ask ourselves whether we want to go through this kind of mechanism or whether there is not a simpler way of doing it, which is what the people who have made submissions to us in large measure asked us to consider.

Mr. Polsinelli: That is something we can look at when we go through the clause-by-clause debate, and if it is felt by the committee that this mechanism is not fair, and the committee can come up with a simpler mechanism that it thinks can work, I am sure the minister will be prepared to take a look at it.

Mr. Chairman: Perhaps the committee would like to take a break at this point--it is about five o'clock--after which we can continue.

The committee recessed at 4:58 p.m.

17:09

Mr. Chairman: To get back to the bill again, I will ask Dr. McAllister to carry on from where we finished the last section.

Dr. McAllister: If you have no further comments regarding the process for the development selection of all the various pay equity plans, perhaps we could move on to section 11. This is the section that provides for the flow of pay equity adjustments and for the employer's liability in terms of the one per cent of total payroll, which has been referred to earlier in your discussions. Given the complexity of the bill, I hope we can provide some clarification in our comments to you.

Subsection 11(1) charges the employer, as soon as each pay equity plan has been filed with the commission, to take all necessary steps--for example, through job audits--to prepare for the implementation of the plan.

Subsection 11(2) provides for any changes in directions or orders of the commission to amend a particular pay equity plan to be deemed to be incorporated into and form part of the plan.

Subsection 11(3) begins with the first adjustments that will be required under the pay equity program to the part III pay equity plans. Just to refresh your memory, the part III pay equity plans are the separate bargaining unit pay equity plans. In any organization within the Ontario public service, the maximum number at this time will be two separate bargaining unit pay equity plans.



Subclause 11(3)(a)(i) requires the employer to begin adjustments no later than 18 months from the date of filing or establishment of the plan. This is where the 18 months in my flow chart comes from for the time period for the application of the pay equity plan. The time limits for each of the part III, part IV, part V and part VI pay equity plans are set out under section 11, where the required date for the first adjustment under each of those respective pay equity plans is set out.

The committee has questioned, as have some of the submissions, why the government maintains that the first pay equity adjustments will amount to approximately two per cent of total payroll. Subclause 11(3)(a)(ii) sets out the provision that it will be approximately two per cent of payroll because the one per cent liability is from the date at which bargaining has begun. The two per cent we talked about in our discussions related to the bill flows from our assumption that the first adjustments will flow approximately two years from the effective date. That is my explanation of where our calculation regarding two per cent of total payroll comes from.

The bill talks about a one per cent liability on the employer in terms of the increase in total compensation payable. I point out that there are two concepts related to money and adjustments in section 11. One is the amount by which total compensation payable must be increased, which is one per cent. The other concept has to do with the adjustments that are required under pay equity plans. They may be for varied amounts, but they have to add up in terms of the compensation that will flow to one per cent of total payroll a year. There are two complementary concepts at work. They may unfortunately have led to some confusion about what the requirements are for employers.

If the pay equity plan were to indicate that less than one per cent of payroll was required to provide full redress under a pay equity plan, the employer would be required to make compensation adjustments only to that lower amount. When you are getting into second payments under a particular pay equity plan, and certainly when you come to the final payments under the final pay equity plan in an organization, which is the comprehensive pay equity plan, the employer may be paying less than one per cent in one year because that is all that will be required at the end to complete pay equity. However, until that point, in every year the employer will be flowing at least one per cent of the previous year's payroll totally. It is divided between the different pay equity programs through clauses 11(3)(a), 11(3)(b), 11(3)(c) and 11(3)(d).

I will move to clause 11(3)(b), which is the nonbargaining unit pay equity plan. Again, the first adjustments are required no later than 18 months from the filing or establishment of the nonbargaining unit pay equity plan. The compensation that is payable during the 12-month period following the first adjustment shall be not less than one per cent of the employer's payroll for the employees covered by that plan.

I should also note that when the employer is making payments under more than one pay equity plan, the payroll required to be put towards those adjustments is proportionately divided. Thus, if you have one bargaining unit pay equity plan and one nonbargaining unit pay equity plan, one per cent of total bargaining unit payroll will be put towards the bargaining unit pay equity adjustments and one per cent of the nonbargaining unit payroll will be put towards the nonbargaining unit pay equity adjustments.

Of course, because at any time all employees are covered under the different pay equity plans, the employer will always be putting one per cent

of total payroll towards pay equity adjustments; so it will always add up. It has led to a fairly complicated process and fairly detailed wording, but we are convinced that the money will flow and that it will always be a requirement of one per cent of total payroll.

The part V pay equity plans in clause 11(3)(c) will be the combined bargaining unit pay equity plan. The first adjustments are required 12 months from the date of filing and once the final adjustments have been made to the part III plans. In other words, you do not begin your combined bargaining unit pay equity plans until you have finished the flow of adjustments from the separate pay equity plans; so you have identified pay inequities for your separate bargaining units and you have identified how much redress is required. You flow the money for those, and when you have completed your bargaining unit adjustments, you begin to flow adjustments from your combined bargaining unit pay equity plan.

For the part VI plan, which is the comprehensive pay equity plan, as already stated, the employer has 12 months from the date of filing to undertake the applications. At that point, or at the later of the dates at which the last adjustments under any part V plan or, if there is not a part V plan, the plans under parts III or IV, have been made, then the adjustments begin. You flow your adjustments for your comprehensive pay equity plan at the conclusion of the adjustments for your other pay equity plans.

Are there any questions about the process in terms of the clicking in of the adjustments?

Ms. Gigantes: I want to ask a question about the implications of the process of the clicking in of the adjustments. My question relates to the point at which there is a comprehensive plan. At the point when the employer and the employees start work on developing a comprehensive plan, we have had payments under the nonorganized worker plan. Have we had payments begin under the part III plan?

Dr. McAllister: It depends. Not necessarily.

Ms. Gigantes: Not necessarily. In any case, the adjustments that are made for each are made out of designated portions of the employer's payroll.

Dr. McAllister: Correct.

Ms. Gigantes: It is conceivable, is it not, that when you get to the comprehensive plan, you may find out that one or the other--and it would likely be, in my view, what you call the management and excluded, the part IV employees, who are affected--will have had larger adjustments because one per cent of their portion of payroll, per capita employee or per capita affected female, is going to be larger.

Dr. McAllister: They will receive a larger adjustment only if their positions are found to be relatively more undervalued. We have not come to a further provision. How can I put it? I can put it quite clearly. You get an adjustment only as deemed to be required to provide redress for pay equity purposes. You do not automatically get one per cent if your pay equity problem can be redressed at 0.5 per cent.

17:20

Ms. Gigantes: You have made that clear. My point is that whatever



the adjustment under part III or part IV, it is possible that when you get to the comprehensive plan, the allocations that have been made under the separate plans may not be judged to be correct ones under the comprehensive plan because you start to compare across those groups.

Dr. McAllister: Yes.

Ms. Gigantes: I do not know how much thought has been given to that and how the figures would work out in the public service, but it seems to me that is--

Dr. McAllister: If I can add a point of information, I envisage that the comprehensive pay equity plan would do two things. One, it would provide the opportunity for either greater or, in the first instance perhaps, some pay equity adjustments that had not been identified as being required in the earlier pay equity plans. You are correct. There may be a determination in the final comprehensive pay equity plan that somebody under one of the separate plans did not receive as much as that person should have, perhaps because of the nature of comparisons that were available, Or there may be a group which for some reason was not identified in the earlier pay equity plans as requiring a pay equity adjustment.

You will note that each pay equity plan requires a consideration of what groups of jobs are to be included in those pay equity plans. So two years down the road, when you get to the final plan and you begin to develop it, there may be a strong argument put forward that somebody who was not included, or a group of jobs that was not included, in one of the earlier pay equity plans should be included in the comprehensive pay equity plan, so that situation could occur.

Ms. Gigantes: Maybe I am just simple-minded, but I do not see anything about the mechanism provided here that rules out the possibility that somebody who had understood she was getting a certain kind of benefit under a part III or part IV plan might not learn under the part VI plan, which compares different work groups, that she was not entitled to that much.

Dr. McAllister: She would have received her adjustments.

Mr. Polsinelli: Dr. McAllister, would it be fair to say that each one of the various plans that has to be established is incremental; that is, once the first bargaining unit plan is established and that adjustment is made, we then start to compare the cross-bargaining units--

Ms. Gigantes: On the basis of those adjustments.

Mr. Polsinelli: --on the basis of those adjustments--and that would result only in an incremental adjustment, it would not go down. The same thing with the comprehensive plan, it would result only in a further increment rather than a decrease?

Dr. McAllister: Especially if you take into consideration the provision that to achieve pay equity, you cannot reduce the wages for any employee or position. I think that applies to females as well as males.

Ms. Gigantes: When that is understood, then I understand what the process will be.

I have a second question which relates more to the one per cent. If we

find in part III or part IV, a comprehensive plan, that a pay differential of five per cent exists and we allocate one per cent per annum separate and above payroll increases to addressing the problem of the wage gap, and at the same time payroll increases of three per cent are applied across the board, then the amount of the one per cent additional equal pay funding to the payroll of females or jobs identified as needing adjustment to meet the goal of pay equity or equal pay, will be less than one per cent on the total of the employees affected.

Dr. McAllister: There might be a slight misunderstanding here.

Again, I want to refer you back to a point I made earlier about the obligation on the employer to make available in compensation adjustments one per cent of total payroll. That has nothing to do with the rates of pay for jobs being increased by only one per cent. They can be increased by 10 per cent in any one year if the one per cent of total compensation put towards those jobs will give them a five, 10 or 15 per cent adjustment.

A point of clarification might help here, because I noticed there was a lot of confusion about this at the hearings. We have referred to there being approximately a four per cent of total payroll pay equity gap, and you have noted that this can result in predominantly female groups of jobs receiving a 10, 15 or 20 per cent adjustment for those particular groups of jobs. There is not an inconsistency in terms of those two pieces of information because the females constitute only approximately 42 per cent of total employment in the public service and a smaller proportion of total payroll.

I was having trouble understanding what you were saying, so I was wondering whether you were saying there was a difficulty.

Ms. Gigantes: That is exactly what I was raising as a question. Exactly. It is helpful. Thank you.

Dr. McAllister: There is a point, though, that might be helpful. I am not sure whether you were getting at it or not; I will just raise it. It has to do with the impact of wage increases that will take place during the implementation of the proactive pay equity adjustments. For example, a job may be identified as requiring a 10 per cent adjustment in pay, but let us say that because of a regular collective bargaining settlement, the pay inequity gap is reduced to only eight per cent for that particular job.

Under this program, what is required is that the job rate be, in the end, adjusted to what is appropriate for pay equity. That would be the basis upon which the amount of money or adjustment required to go to that job would be determined. It would not be that it used to be, let us say, a \$5,000 gap and now it is only \$3,000 because of a collective bargaining settlement. You still would not get the \$5,000. You would get only the \$3,000 that would be required under the settlement.

Ms. Gigantes: I understand.

Dr. McAllister: In a sense, one of the points I was beginning to make earlier was that towards the end of the proactive period, the comprehensive pay equity program, because it covers all predominantly male and female groups of jobs, will allow for the employer and for the bargaining agent through complaints--although also in consultation with the employer--to go back and look again at pay inequities which may have been redressed earlier on in the program and perhaps upset because of collective bargaining. If they deem that they require a further adjustment during that proactive phase, they can be picked up during the proactive program.



Although we have had discussion about the date upon which the first adjustments will begin, there may be some people who, with the first adjustments under the first pay equity programs, achieve pay equity or almost achieve pay equity.

Ms. Gigantes: Yes.

Dr. McAllister: However, during the whole proactive period, that may be upset. They may become relatively disadvantaged again.

Ms. Gigantes: Yes.

Dr. McAllister: The comprehensive pay equity program which will be developed and implemented later on does allow you to go back to look at all the jobs again. They are all on the table, and an employee could complain that he or she deserves redress under the comprehensive pay equity plan even though pay equity had been established for him or her under an earlier plan that had been upset because the proactive period was still under way.

Ms. Gigantes: I can understand all this in a philosophical sense, but I have great difficulty getting my mind around it in a practical sense. If there is a wage gap, say, of \$5,000, that needs to be addressed during a four-year period and we are doing it in a group of 10,000 employees, 42 per cent of them are women and perhaps 20 per cent are going to need adjustments of up to 10 per cent over a four-year period, I would like to feel assured that one per cent per year is really going to do that, given the wage increases that are going to be going on at the same time. As we know all too well, they sometimes have the effect of increasing the pay gap between men and women rather than decreasing it.

Dr. McAllister: My response to that would be that wage increases may increase the absolute gap, but not the relative gap. Of course, they could increase the relative gap, but--

Ms. Gigantes: You have got it, and that is what they have been doing fairly frequently.

Dr. McAllister: In the Ontario public service, on an aggregate level, the relationship between average female and male earnings has been improving from the point of view of females over the past four years.

Ms. Gigantes: It damned well should be, considering all the affirmative action we have been trying to do.

Dr. McAllister: No, no, but given that has been occurring, it means--

Ms. Gigantes: Excuse my language.

Dr. McAllister: That is all right.

The Vice-Chairman: I think the enthusiasm is well understood and appropriate.

17:30

Dr. McAllister: That is fine, but the relative position of women in terms of average annual earnings in the public service has been improving.

Ms. Gigantes: Yes, but that may have nothing at all to do with addressing the wage gap per se but rather much more to do with the fact that women are joining jobs that have better pay. They are much more related to women's very active pursuit of affirmative action for themselves than anything else.

Dr. McAllister: Let me refer to another point you made. If it was the case that the government was requiring the employer to take a flat amount of money, let us say \$20 million a year for each of four years and apply it towards pay equity adjustments, as opposed to the same per cent of total payroll, which increases every year in relative terms, then the government would be falling behind in terms of its assessment.

Ms. Gigantes: In abstract I agree with you but to get my head around this, let me give you an example. In 1984, Bob Rae looked at the pay of a switchboard operator and a parking lot attendant at Queen's Park. We established what the job was. We felt in our minds that these were probably comparable jobs and we told the public about it in order to encourage people to focus on this issue. It is a good example.

In 1986, Bob said, "Let us go back and look at this." They had received pay increments that were comparable on a percentage basis, which meant that the wage gap had expanded both in absolute and in relative terms. That is the concern I have.

If you are using only one per cent of the total payroll and you may have to address that one per cent to almost all of the women you are employing in any particular work group or in one particular establishment, you are going to take for ever, at a one per cent payroll increment, to overcome normal inflationary--whatever you want to call them--wage increases that lead to the increase in total payroll.

Dr. McAllister: The point I would like to make again is that as inflation has its impact on total payroll, so does the amount of money available in terms of four per cent of total payroll that is available for redress.

Ms. Gigantes: I understand that.

Dr. McAllister: The only other point of information I would like to add is that if the state of Minnesota implemented pay equity in the public service with 3.7 per cent of total over about a four-year period, we have to provide a bit of further information. We have looked at the relative size of the pay gap in the Ontario public service. I certainly take your point that affirmative action has had a positive impact on that, which is deserving of consideration and also note, and the size of the pay gap in the state of Minnesota when they started the implementation of pay equity.

It is based partly on the experience in the state of Minnesota in providing redress with less than four per cent of total payroll that we have, with some confidence, adopted an approach that requires one per cent of total payroll per year to put towards pay equity adjustments but also left it open so that there is not an absolute requirement, such as in Manitoba, that you end once you put up four per cent of payroll.

In that respect the government has said in its bill, "If we have erred and the gap happens to be more than four per cent, then we are prepared to require the employer to pay until all pay inequities have been redressed."



It is with a certain degree of confidence, but yet not a desire to limit adjustments if inequities are identified, that the government approach in this bill reflects.

The Vice-Chairman: Thank you. Are there any other comments or questions?

Mr. Polsinelli: I still do not understand this point.

The Vice-Chairman: Ms. Gigantes, do you want to take another run at it?

Mr. Polsinelli: Is your concern that there will not be enough money set aside by the government to close the gap?

Ms. Gigantes: If we are allocating starting at year two on the basis first of two per cent and then one per cent and then one per cent of total payroll, depending on how many employees are going to receive payment under Bill 105, in my view we can end up in a situation where a one per cent contribution to the annual wages of positions identified as requiring equal pay compensation may not be sufficient to overcome the effect of general wage increases in which those positions are also affected.

The clearest example I can give is a factual example, which is the switchboard operator and the parking lot attendant. You apply an across-the-board three per cent annual increase in wages and what you do is increase the gap. What we are being told is that one per cent of total annual payroll is going to be enough to overcome that increase in gap plus compensate for equal pay. I have yet to see any indication that is necessarily so.

Mr. Polsinelli: One per cent of payroll will keep getting greater as the inflationary factors are brought into place.

Ms. Gigantes: I understand that.

Mr. Polsinelli: Okay. I guess Dr. McAllister has explained it quite well but--

The Vice-Chairman: What we have here is a difference of opinion, not so much a lack of understanding.

Ms. Gigantes: If one has a concern, such as I have, the impetus which I feel is to make sure that we provide money quickly so that you catch up as quickly as you can so that you are not for ever trying to compensate for a general annual increase in wages above and beyond the compensation that you are looking for to provide equal pay.

Mr. Polsinelli: I appreciate your concern. Perhaps Dr. McAllister can prepare, in more tangible terms for the committee, an example as to how the adjustments would be put into place.

I think it is more than just a difference of opinion but rather a factual situation that the ministry has investigated. We feel fairly confident that one per cent for the previous year of payroll is sufficient to cover the identified wage gap.

If Dr. McAllister can come up with a few tangible examples by next week as to how it would be applied, your concerns may be allayed.

Ms. Gigantes: Frankly, my concern was getting rid of the real complications in parts III through VI. It is the reason our amendments speak to, first of all, a quick payout and, second, a three per cent annual contribution. If you are going to do the job, to do it quickly gets it done; to spread it out may mean that you never really get it done.

Mr. Polsinelli: I appreciate what you are saying. You will also recall that the accord has certain terms in it; it talks about fiscal responsibility.

If we look at Manitoba, Manitoba has agreed to go with one per cent of the previous year's payroll, Minnesota is going with the previous year's payroll. This program is being implemented within a framework of fiscal responsibility.

The Vice-Chairman: Thank you. Dr. McAllister, if you feel you are able to provide some further information for the committee along the lines Mr. Polsinelli has suggested, obviously the material could be tabled on Monday when we meet following routine proceedings. If it is possible to have it available prior to that time, I suspect the committee would appreciate it since we do begin detailed clause-by-clause Monday after routine proceedings.

I think it would be useful to simply leave it in your hands if you are able to proceed with that.

Dr. McAllister: I would like a clarification so there is a correct expectation.

Obviously, for the Ontario public service, because there has not been a pay equity job evaluation undertaken, it will not be possible to provide a concrete example of what adjustments specifically will be required for any group of jobs. However, from the Minnesota experience and the information we have on what has happened there and how the proportion of payroll was allocated, I could perhaps give you some examples. I am not really sure that is what you are looking for, though. Is that the sort of information you would find helpful?

Ms. Gigantes: That might be helpful.

I can fully understand that to come up with figures for what this would mean in Ontario is no simple matter at all. I do not think it is easy to table that kind of information.

Dr. McAllister: What I cannot tell you exactly is who would be requiring pay equity adjustments and how large they would be, because one does not know that until we have undertaken a pay equity job evaluation. For example, we have given you a list of the predominantly female groups of jobs, but I cannot tell you which of those groups of jobs will require a 10 per cent, 15 per cent or 20 per cent adjustment.

17:40

Ms. Gigantes: That is correct.

Dr. McAllister: I cannot do that.

Ms. Gigantes: Yes, I understand that.



The Vice-Chairman: That, I take it, is precisely the point.

Dr. McAllister: In the light of that, what would you like?

The Vice-Chairman: If I may clarify from the chair, Dr. McAllister, I do not think it was the question of a request being put by Ms. Gigantes; it was a suggestion from Mr. Polsinelli, the parliamentary assistant to the Minister of Labour (Mr. Wrye), about materials that might be collected. So as not to burden the committee further with a discussion around whether the material might be available, I suggest that we leave it in your good hands and, if something is available, simply ask that you contact the clerk at the earliest possible opportunity so that the committee can have the greatest length of time possible to review any materials you might have prior to a detailed clause-by-clause.

Committee members, we shall proceed with discussion on section 11. I am sorry, Mr. Gillies. Did you want to--

Mr. Gillies: No, it is okay.

Dr. McAllister: We have gone through subsections 11(1) to 11(3), which provide for the first adjustments required under the pay equity plans.

The rest of section 11 sets out the requirements on the employer to keep making adjustments until pay equity has been redressed within each separate pay equity plan and to keep the money, the one per cent of total payroll, flowing in the event--not in the event, because it will happen--but when adjustments have been completed under each of the separate pay equity plans, consecutively. That is how the one per cent of total payroll liability keeps running on until you have reached the end of the program in subsection 11(6), where the employer may, in that final year, pay less than one per cent of total payroll towards pay equity adjustments because there may only be 0.5 per cent left or required in that final year.

Subsection 11(7) provides for retroactive payments in the event that the Pay Equity Commission is required to extend the time limit for the filing of the pay equity plan or the making of the first adjustments in rates of compensation. For example, in the event that an employer makes a representation to the commission that he or she is unable to undertake job audits in the 18-month time period required for each of the separate bargaining unit plans and the commission extends the time limit, then the employer will be liable for retroactive adjustments to the date that would have been the same as 18 months from the date of filing. There it acts as a disincentive on employers not getting about the business of expeditiously auditing jobs. That is the extent of retroactivity under the bill. Any further payments, of course, then become retroactive to the extent that they have been delayed by the extension of the time limits in any previous pay equity plans.

The government has an amendment, subsection 11(7a), which deals with the allocation of compensation in the adjustments under pay equity plans. It provides that the compensation which is paid out to groups of jobs under each pay equity plan shall be proportional to the total required adjustment for that group of jobs.

If this helps at all, it is similar in principle to the Canadian Union of Public Employees proposal for proportional initial adjustments. It is the same principle we have adopted. The reason, I believe, that is stated on our amendment sheet, is that it would eliminate the possibility of favouritism

coming into play both within the bargaining unit pay equity plans and certainly within the employer-initiated pay equity plans, so that people would have their pay gaps reduced in an equitable, proportional fashion over whatever number of years it may take for the adjustments to be made.

The Vice-Chairman: You might stop at that point. We have a question.

Mr. Gillies: I wonder whether you might elaborate on that, Dr. McAllister, in terms of the determination of fair and equitable. I think I know what you are getting at, but when I look at your examples under the proposed amendment, I see a pay discrepancy: group A at \$20,000 and so on. You see what I am getting at.

I will be very frank. My bias is to be a little more equitable with the people being paid \$10,000 than with those being paid \$20,000 because, despite the job category, one of the reasons group C is being paid \$10,000 is historical sex stereotyping.

Dr. McAllister: There is no doubt that there are different understandings of the notion of proportionality and different points of view about which may be more equitable. I do not differ with you on that; I only state that this is the government's amendment. If you want any elaboration on how it will work, we will be very happy to provide it.

Mr. Polsinelli: Perhaps we can ask that Mr. Gillies be appointed chairman of the Pay Equity Commission so that his views may be translated into reality.

Mr. Gillies: There are many things said in jest. Thank you for the thought.

Any elaboration we might have on that would be most appreciated.

The Vice-Chairman: What would the severance position be?

Mr. Polsinelli: We will give you six months.

Mr. Gillies: I meant on the amendment, not on Mr. Polsinelli's proposal.

Ms. Gigantes: I am not sure whether I understand exactly what Mr. Gillies was referring to. You were referring to group C?

Mr. Gillies: I am looking at the example on the amendment that talks about group A having a present salary of \$20,000 and a discrepancy of \$7,000.

The Vice-Chairman: He is looking at the government amendment package.

Mr. Gillies: It is government amendment subsection 11(7a). I am looking for the extrapolation of that first chart, which shows me how the adjustments are made, with my expressed bias that I hope the lower-paid group will be getting more of a proportional boost from pay equity than the higher-paid group.

Mr. Polsinelli: It probably depends on how you interpret "proportional," but if the lower-paid group has a gap of, say, 10 per cent and the higher-paid group has a gap of five per cent, the proportional adjustment requires that the lower-paid group receive twice as great an adjustment as the



higher-paid group. If my interpretation of this section were accepted, that would satisfy the requirement that the lower-paid group receive a greater chunk of money or a greater immediate adjustment than the higher-paid group. Following your analysis, the lower-paid group would have a greater wage gap than the higher-paid group.

The Vice-Chairman: Mr. Gillies, I believe Dr. McAllister wanted to comment on that interpretation.

Mr. Gillies: I am worried that I am misinterpreting your chart, so please tell me if I am.

Dr. McAllister: I do not think you are; you have a different point of view about what would be equitable.

Whatever assumptions on equity may be built into yours, if there is an assumption of what equity is built into this, it is that although there may be an absolute difference in the number of dollars of discrimination for the lower-paid jobs, the government has not introduced any value judgement which suggests that higher-paid females are somehow less deserving of equity adjustments or not really as undervalued as lower-paid women. In this type of proportional allocation, the government has taken the point of view that if there is a wage gap due to discrimination, it is discrimination whether one earns \$40,000 a year and should be making \$45,000 or earns only \$10,000 a year and should be earning \$15,000.

This was an attempt to look at them as being, in a sense, the same. I understand your point of view that they are different. That is the explanation for this type of proportional allocation.

Mr. Gillies: Fair enough. You know my concern.

Dr. McAllister: I understand.

17:50

Mr. Gillies: The point I make to Mr. Polsinelli is that with his example it works, but another example could be of the three categories each receiving an adjustment that works out to the same percentage of salary. When you look at the history of collective bargaining, if giving a uniform percentage adjustment across a category could eliminate the gap, then it would have happened a long time ago.

Ms. Gigantes: First of all, does subsection 11(7a) apply to all the plans, part III through part VI?

Dr. McAllister: Yes.

Ms. Gigantes: Then how does subsection 11(7a) work in conjunction with subclause 11(3)(b)(ii) on page 8? It seems to me you have two conflicting principles that are supposed to be applied in this situation.

Dr. McAllister: Let me try to explain how this will work. Subclause 11(3)(b)(ii) refers to putting one per cent of the employer's payroll for the nonbargaining unit employees towards pay equity adjustments for that group. Let us make the one per cent of the employer's payroll concrete. Let us say it is \$1 million that is to be put towards the pay equity adjustments. Subsection 11(7a) then says that within that pay equity plan, that \$1 million will be

allocated proportionately according to the size of the pay gap identified for the job groups deserving redress. It just talks about proportionately allocating that \$1 million according to who is deserving and by how much. It is a subprovision, if you like, of the one per cent of total payroll amount.

The Vice-Chairman: Let us proceed with the next clause.

Dr. McAllister: Subsection 11(8) provides that the employer is not required to increase compensation payable during pay equity plans during any 12-month period in an amount greater than one per cent of the employer's payroll, except as provided in subsection 11(3) and subsection 11(7), which have to do with the two per cent requirement, approximately, that will come into play with the first adjustments because of the approximate two-year time lag between the effective date and the first adjustments.

I should refer you to subsection 11(9) and then to a government amendment. In subsection 11(9) the definition of "payroll" is consistent with the definition at the beginning of the bill for total compensation, but the government has an amendment, subsection 11(10), which is a new subsection. It requires the employer to file with the Pay Equity Commission the results of the job audits that have been undertaken during the application or implementation of the pay equity plans. There is no provision in the bill, as it is currently worded, to require the employer to do that. To note the significance of this, that becomes important if one is to have an effective complaints provision later on. The relevance of that really comes up when we get to the discussion of section 25.

That ends the flow of adjustments under pay equity plans, unless there are any questions requiring further clarification.

Mr. Gillies: At the appropriate time I will be moving two amendments to clauses 11(2)(a) and 11(3)(a), which would affect the retroactivity we desire to February 11, 1986, for first adjustments.

Dr. McAllister: I propose that we proceed to the complaints provision, section 25, which has been totally restructured in the government amendment. In your package of government amendments, you will find the proposed amendment to section 25 on pages 24 and 25. You will find the reasons on page 26 of the government package. It goes through them in chronological order if you want further reading material on this.

The government's proposed program for the proactive implementation of pay equity differs from programs in other jurisdictions in that we provide for complaints during the proactive period. These complaints are limited to the substance of pay equity plans and their orderly implementation. It is not until section 26, which we will deal with next, that the full complaint stage of the pay equity program comes into play. All the complaints in section 25 have to be about the substance or content of pay equity plans and/or whether the pay equity plans are being implemented as required under the act.

Under the proposed amendments, complaints may be filed by employees or bargaining agents with the Pay Equity Commission regarding the contents of the pay equity plans. They can complain that the job evaluation or comparison system is not gender neutral, is inappropriate or is both. They can complain that the groups of jobs, predominantly male and predominantly female, have not been properly identified. They can complain that any excluded positions under section 8 are inappropriately excluded. They can complain that the method set



out for the application of the job evaluation or comparison system is inappropriate.

These are essentially the contents, if you refer back to section 7 of the government's amendment of the pay equity plan.

The Vice-Chairman: Do the members of the committee have any questions?

Ms. Gigantes: I have some comments but no questions.

Dr. McAllister: I have to refer to my own amendments here. I want to find in my own package amendment 20a, which is just before section 25 because it comes up in the next section. On page 23 of your package, you will find a proposed amendment, section 20a. We have also provided in the complaints provision under subsection 25(3) that there may be complaints with respect to reprisals. Unfortunately, we have not got to the reprisal section because of the way in which we are going through the bill, but we will give that proposed amendment full consideration later on. The proposed amendments to the complaints section include a provision to be able to complain about reprisals, should they occur, and they are contained on page 23 of your package.

Subsection 25(4) sets out that "any party who is under an obligation to bargain in good faith may file a complaint with the commission complaining that another party has failed to bargain in good faith." Previously, there was no provision in the complaints section for complaints with regard to a failure to bargain in good faith. There has been concern expressed about the time lines that will be required to develop and implement pay equity plans. This would allow complaints in the event that during the negotiations about pay equity plans it appears that either party is not serious about the discussions and negotiations, so that the three-month period that has been set aside for negotiation would not be totally lost. You could complain to the commission that the employer was not getting on with the business or the employer could complain that the union was not.

18:00

Subsections 25(5) and 25(6) set out the time lines during which you may complain about particular matters. "No complaint may be filed under subsection 1 more than 90 days after the filing with the commission, or the establishment by it, of the pay equity plan to which the complaint relates. The reason for having this and the subsequent time lines for specific complaints is to facilitate the expeditious application or implementation of the pay equity plans.

I can understand the position that it limits people's rights. On the other hand, if you have unlimited time lines during which you may complain about whether a job evaluation system is appropriate, it would be very unfortunate if you could complain about that following the application phase after the employer had already invested all the time in undertaking job audits only to find that a complaint had been lodged that it was a totally inappropriate methodology. That is just to give you a reason for having particular limits on particular complaints, whether or not you agree with those limits.

Under subsection 25(6), no complaint may be filed under subsection 2--I see I have probably missed that in my discussion; excuse me--regarding whether the job evaluation system is being properly applied or the compensation

adjustments are being made as required more than six months after the first adjustments are required or more than one year after the first adjustments should have been made. Again, there are limits in the complaints section on that.

There is actually a mistake here. In clause 25(6)(b) it should not be one year after the first adjustments; it should be one year after the last adjustments. That is a typing mistake.

There is also a time restriction on complaints regarding reprisals under subsection 25(3) that is contained in subsection 25(7). It has to be within a reasonable time of the alleged contravention and the commission has the power to refuse to consider a complaint if it is more than six months after the alleged contravention or reprisal. There is a staging of the complaints process so that once you have passed the complaint date for the contents of a pay equity program, presumably the employer will be implementing it and can rest assured that the commission is not going to suddenly make a determination that everything is being done inappropriately.

In a similar way complaints are limited time-wise with regard to the comparisons or evaluations being undertaken properly or the adjustments in compensation not being made.

Mr. Gillies: Our party will be moving a few amendments in this area. One would be to include a section 24a, which would be the penalty section. As we indicated earlier, we intend this legislation to have sanctions. I will read it because it is quite brief:

"(1) Every person who contravenes or fails to comply with this act or an order or direction of the commission is guilty of an offence, and on conviction is liable,

(a) if an individual, to a fine of not more than \$1,000, or

(b) if other than an individual, to a fine of not more than \$100,000."

Then we would need a subsection 2 to deal with the style of prosecution. We have an amendment that brings it in line with sections 98, 99 and 101 of the Labour Relations Act, which makes it consistent. I might add that we chose the dollar values of the fines because they are more or less in line with the other provisions of the Labour Relations Act.

With regard to section 25, following on Dr. McAllister's comments, at the present time we intend to put an amendment to clause 25(1)(b), which is our standard amendment to deal with the gender predominance feature of the bill.

We will be moving the deletion of 25(1)(c). I am trying to remember the appropriate procedural handling of that, which may be just to vote against it. It is to make it consistent with our earlier amendment which would have been to delete section 8.

Ms. Gigantes: In this section--I am speaking of part VIII--we find a clause that says that the filing of a complaint shall not hold up implementation of the plan or is that in an earlier section?



Dr. McAllister: I may have a lapse of memory but I do not believe there is a provision to that effect.

Ms. Gigantes: I thought there was.

Following on Mr. Gillies's description of the proposals of his party, I indicate to the members of the committee that we are looking for a major amendment to part VIII, laid out on four pages of our package of amendments.

First, the complaints section is extremely difficult to follow in Bill 105. We have organized the process that would be followed in two parts as far as complaints are concerned; one, in unionized establishments, and two, in nonunionized establishments. I believe that makes it easier for the non-Philadelphia lawyer to understand what is implied. In both cases, there is the same complaint mechanism, but at different time stagings, that can be followed about the creation of the plan, as it were.

Also, in both cases, there is the provision that after first payments have or should have been made under a plan, there can be a general complaint that the plan is not providing equal pay for work of equal value. You will find those under subsection 25(2) for unionized establishments and clause 26(1)(b) for nonunionized establishments.

I have just been given a kind note by the legislative counsel. He says that it may be only in our amendments that there is reference to the fact that we are looking for a process that will not be stopped in terms of the creation and implementation of equal pay plans by a complaint. That is something committee members may want to consider seriously because it is fine to have a complaint that leads to an amendment down the road, but we do not want to see the complaint system call things to a halt.

18:10

In our new sections, in particular 27b, we have attempted to lay out very clearly the restrictions on employer behaviour towards an employee who is simply exercising rights under this legislation.

In section 27c, two pages in, first we have a title change for part IX and we have created 27c which would provide that an employer who did not comply with the act would suffer a penalty sufficient to provide a deterrent. We wondered whether a court would be willing to take seriously a complaint against an employer, or indeed a judgement against an employer, if there was a relatively minor infraction by the employer under this act, or whether the court might be moved not to find somebody guilty if the penalty were too stiff. It is probably reasonable that we ask the court to consider what might prove a deterrent for the problem being addressed in a conviction.

Mr. Gillies: Earlier, I neglected to mention a couple of other amendments to section 25. I apologize. We have three more amendments. Assuming the government amendment stands, these then are amendments to the amendment. We want to expand somewhat the time lines for the complaint procedure as was suggested in a number of briefs before the committee.

Very briefly, we will be moving an amendment to subsection 25(5) which would replace the 90-day limit in that complaint section with 120 days.

In clause 25(6)(a), we will be replacing six months with nine months.

In clause 25(6)(b), we will be striking out one year and replacing it with 18 months.

We feel these make for more generous, if not more realistic, time limits.

Ms. Gigantes: I have a question of Dr. McAllister and Mr. Gillies regarding the extent to which the complaints process each of them is speaking for addresses the question of equal pay for work of equal value.

The government amendment, section 26, reads, "From the time of the first adjustments in rates of compensation pursuant to a pay equity plan under part VI, the employer shall not introduce any gender-biased compensation practices, and any employee or bargaining agent for employees of the employer may file a complaint with the commission respecting such practices."

I may have missed something in the review we have just been through, but even with the amendment, I do not read the bill as providing that after the plans have been established a person can make a complaint and say, "I do not feel all this we are going through or have gone through has produced equal pay for work of equal value either for me or a bunch of colleagues." That was one of the items that was raised pretty strongly by a lot of people who made submissions to us.

Mr. Gillies: I think that is a legitimate concern. I am hoping that we can address that partially with an amendment that I have--somewhere in this mountain of paper--which would cause the bill to effect ongoing monitoring in the post-proactive stage.

Ms. Gigantes: It is not the same.

Mr. Gillies: Not the same?

Ms. Gigantes: No. We have not heard from Dr. McAllister. Is it your reading of the bill plus the amendment that there is the opening I am looking for, for a person or a group of people to make a complaint that this process has not produced equal pay for work of equal value?

Dr. McAllister: In that discussion we will have moved on to section 26. Until we have addressed section 26 as a committee, I would rather limit my response to whether one could make that complaint during the proactive period. Absolutely, one is limited to what one can complain about during the proactive period, which is to say she can only complain that she has been left out inappropriately from a pay equity plan, or that the substance of the plan is inappropriate to provide pay equity, or that the plan is not being appropriately implemented and the proper adjustments as required are not being made.

She cannot complain, for example, if she is clearly outside of a predominantly female group of jobs, that she, for some reason, is deserving of a pay equity adjustment during the pay equity program, unless she can convince the commission that her particular job should be designated as a predominantly female group of jobs. But I am taking your comment quite broadly.

Ms. Gigantes: Right. However, what we are looking at in terms of the government proposal for amendment to section 26 is that 26, as written, should come right out. Then what we would be looking at is a prohibition that an employer could not introduce any gender-biased compensation process. It does not, in my reading of it, suggest that after the implementation of pay equity



plans as set out in Bill 105, employees could make a simple, clear, direct complaint that would have to be addressed, which says that equal pay for work of equal value is not being provided.

Dr. McAllister: It is correct that they would not be able to complain about situations that were in existence during the proactive period that they felt were inequitable and were deserving of redress that were outside the parameters of the proactive program.

Ms. Gigantes: I do not know if I followed that.

Dr. McAllister: Sorry.

Ms. Gigantes: What I am saying is when you get to section 26 you are finished with your planning stage and you are into first adjustments. All that 26 says is that the employer shall not introduce gender-biased compensation.

Dr. McAllister: It is first adjustments under part VI, so it is first adjustments to the final pay equity plan. Just as long as that is clear.

Ms. Gigantes: That is fine, but all that we are saying here is the employer shall not introduce any gender-biased compensation practices. The fact is there may be people who, for one reason or another, because they are not in the 60 per cent group, because they cannot relate to a 70 per cent group, for whatever reason, decide that they are not getting equal pay for work of equal value.

Mr. Gillies: Let me try again. I think I found what I was looking for, Ms. Gigantes. I think we have it.

You will recall that we are going to propose an amendment way back to section 3a, which we call our discrimination prohibited section, "No employer shall establish or maintain and no bargaining agent shall bargain for differences in compensation between female and male employees who are performing work of equal or comparable value."

Then, we will be moving a new section 26, which I was going to do when we moved on to 26, moving that the section as it stands be deleted and the new section read: "Where an employer, an employee or a bargaining agent is of the opinion that there has been a contravention of subsection 3a(1), the employer, employee or bargaining agent may file a complaint with the commission."

Ms. Gigantes: Yes. Can I suggest, Madam Chairman, through you to Mr. Gillies, that he look at the elegance of the proposals we have submitted because they are readable. We are not talking about a section 26 that refers to section 3; we have got it all put together here. It is quite beautiful. It flows. It is identifiable whether a union group or a nonunion group is being referred to. The time lines and the types of complaints can be clearly identified. It says in these amendments that we do not want to hold up the process either in planning or implementation because there is a complaint, and finally, and most beautifully and clearly, it says that in the end, no matter what else, employees can complain on the basis of unequal pay for work of equal value.

Mr. Gillies: We will take a look at it. I will readily concede to Ms. Gigantes that she found hers before I found mine.

Dr. McAllister: I was going to go to section 26 next, but we may

have resolved that problem, unless there is any further clarification that committee members might want about our proposed amendment to section 26.

The Vice-Chairman: Our sitting this evening has slightly less than 10 minutes to go. We have a few sections; we have to go back to sections 17 through 25; and 28 through 31. The chair and officials due to join us on Monday would welcome some guidance from the committee as to whether you want to simply call whatever is completed at 6:30 p.m. sufficient on the walk-through and go into clause-by-clause on Monday, or what.

Ms. Gigantes: It will be sufficient. I am very grateful for the chance we have had to spend these two sessions. It has been very useful to me and I thank staff present for assisting us this way.

Mr. Gillies: I concur, Madam Chairman. This exercise has been most helpful in letting everyone see the lay of the land. I am very appreciative of staff help in giving us interpretation and background on this.

The Vice-Chairman: Mr. Polsinelli?

Mr. Polsinelli: I am just getting ready to go.

The Vice-Chairman: Committee members, did you want to proceed with section 26? I sense that the committee feels the meat has been savoured. In that case, on behalf of all the committee, we extend our thanks to staff for assisting in the walk-through. I will see all of you bright-eyed and bushy-tailed after routine proceedings on Monday to begin clause-by-clause debate.

The committee adjourned at 6:24 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

MONDAY, OCTOBER 27, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Partington

Gillies, P. A. (Brantford PC) for Mr. O'Connor

South, L. (Frontenac-Addington L) for Mr. D. R. Cooke

Also taking part:

McClellan, R. A. (Bellwoods NDP)

Clerk: Mellor, L.

Staff:

Revell, D. L., Legislative Counsel

Ward, B., Research Officer, Legislative Research Service

Witness:

From the Ministry of Labour:

Wrye, Hon. W. M., Minister of Labour (Windsor-Sandwich L)



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, October 27, 1986

The committee met at 3:39 p.m. in room 151.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: Members of the committee, there are some procedural matters I would like to deal with at the outset. With respect to the work we have coming up this afternoon, I have a couple of brief statements to make, with your indulgence and the indulgence of the minister, then we can get on with our business.

Ms. Gigantes: May I ask the nature of the statements you are going to make?

Mr. Chairman: The first statement I want to make is with respect to the procedure that I recommend the committee follow. It is in keeping with the procedures other committees have followed relative to the preamble of the bill not being dealt with at the outset.

Ms. Gigantes: Okay.

Mr. Chairman: The second statement is in connection with the admissibility of the amendments as tabled by both opposition parties and the ruling I wish to make in connection with those.

Ms. Gigantes: On the second statement you wish to make, is it your intention to allow some discussion, concerning the matter on which you will be ruling, before you make a ruling?

Mr. Chairman: With the committee's indulgence, I suppose we could allow some. The decision I finally make, the decision of the chair, as you know, is not debatable.

Ms. Gigantes: That is right.

Mr. Chairman: After I make the first statement, recognizing that I have told you the order of business and that I am about to make a statement in connection with the admissibility of the amendments, using some flexibility, I could allow for some brief comments prior to my actual ruling.

If you wish to handle it that way, and considering the importance and seriousness of the amendments and the issue before us, I am prepared to allow that flexibility. I think that would be in order.

Ms. Gigantes: That would be good. The comments may not be brief in the sense that they will not take three minutes to make.

Mr. Chairman: No, I was not thinking of that.

Ms. Gigantes: However, we will make them as brief as possible considering the things we would like to say concerning your possible ruling.

15:40

Mr. Chairman: Is it also the agreement of the members of the committee that those statements be limited, not necessarily exclusively but for the most part, to the critics and that there be very limited comments from other members of the committee so we do not get into a full-fledged debate on the issue? Can I have your agreement and indulgence with respect to that procedure?

Ms. Gigantes: I understand you want to proceed as quickly and as efficiently as possible. We would like to do that too. On the other hand, it is important, when we get to the question of your ruling, to be able to cite all the precedents we are eager to bring to your attention before the ruling.

Mr. Chairman: That is fair. As I indicated, the chair, in its usual fashion, is prepared to allow the maximum degree of flexibility and input. Unless I can be persuaded otherwise, I will leave myself open to that kind of persuasion.

I go to Mr. Polsinelli and then to Mr. Gillies.

Mr. Polsinelli: While I am prepared to adopt any procedure you may feel is expedient, I submit in the interests of justice, if you open up the question to debate, then the debate should not be limited by your decision on what is and is not appropriate debate. If the question of the ruling you are about to make is open to debate, then each member of this committee who feels he should express an opinion on the matter should be allowed to do so to the extent he would like.

If, however, you choose to make the ruling and follow the procedures of the House, which indicate the ruling of the chair is not debatable, then I will also support that position.

Mr. Chairman: I am not talking about the ruling of the chair. The question put to me by Ms. Gigantes was whether the chair would allow debate prior to my statement, which will then lead to my ruling on the amendments. The procedure is somewhat different from what you have just described.

I am prepared to do that only because some members of the committee have indicated they want to bring to my attention some precedents in connection with the type of amendments being proposed. That is fair. It has nothing to do with the ultimate ruling I plan to make, but I leave myself open to the influences of those comments.

The final ruling I make will not be debatable. At that time, I will curtail the debate immediately and I will ask for a vote on whether you agree with the decision made by the chair. That is your decision.

Mr. Gillies: You have really covered it. I just want to associate myself with the earlier portion of the remarks made by Mr. Polsinelli. At such time as we debate the matter on which you are about to rule--because we appreciate that your ruling is not debatable; that is not at issue; we do not want a lengthy procedural wrangle--I am sure you would want to hear the thoughts of any interested member of the committee as opposed to merely the critics. I heard that in what you were saying and support the direction you propose to take.



Mr. Chairman: The chair does not intend to deal with the question of comment prior to my statement in an unduly restrictive fashion. I will be flexible on that matter.

Perhaps we can get under way now. We have at least a reasonable understanding and will take it as it comes through the course of the meeting.

Before I rule on the amendments on Bill 105 tabled with this committee to date and before we have a discussion with respect to that, as I have now agreed to do, I would like to indicate that the title and the preamble of the bill should be dealt with only at the conclusion of the consideration of all other sections. That is the normal process we follow in all committees in dealing with all bills.

Section 1 should also be considered upon completion of all other sections of the bill. This section reflects the terminology used throughout the bill. Until all proposed amendments have been considered, it is impossible to determine in advance the relevance of the definitions in the bill, as currently drafted, as it may be at the completion of the clause-by-clause consideration procedure we are about to begin.

If we can deal with it in that fashion and with your agreement, then we will leave the general preamble to the bill for the end and we will get on now with the discussion of the admissibility of the proposed amendments which have now been tabled and circulated to all members. I am now open to discussion with respect to the amendments that are being proposed by the two opposition parties.

Ms. Gigantes: As we are all aware, the issue of economic equality for women is one that has been dealt with in various forms at various times in this Legislature in years past. The bills that have been brought forward on a private members' basis and have been judged to be in order--and here I speak to the issue of widening the scope of Bill 105 as it sits before us. Bill 105 now applies only to the public service. We would see it apply to the full public sector and it is our intent to do that and we are joined in that intent by the Progressive Conservative Party.

To get back to previous bills which have addressed the same subject, I would draw the attention of the members and the chair to the fact that as far back as 1974, from the New Democratic Party, there was a private member's bill entitled An Act to amend the Employment Standards Act, 1974, known as Bill 3 and put forward in the name of Mr. Bounsall.

That bill put forward an amendment to the Employment Standards Act and it called for application across the board to people who worked in Ontario. It was an amendment designed to provide equal pay for work of equal value and it implied, because of its universal application in the province, that there would be governmental funding involved and, further, that the scope of the legislation we wanted to look at was going to be universal.

In this case, what we are looking at are government proposals for legislation which are limited. Although we were told early on by the government that the first bill we would see, which is Bill 105, would be a bill that was addressed to the public sector, "public sector" in this legislation has been addressed in the most narrow sense.

We would like to see it broadened to meet the original promise of government legislation and to also meet the definition of "public sector" that

has been applied in this Legislature earlier when we dealt with restraint to public sector wages.

We did not deal only with restraint to public service wages; we also addressed wage restraint in the full public sector. That is the definition we are accustomed to using in Ontario in respect of wages in the public sector and it is the definition that has been established by legislation--I must say without my party's approval, although with the approval of the other two parties.

We think it should be applied when the public sector equal pay for work of equal value issue is addressed. I would also cite Bill 157, which was introduced by my colleague Mr. Charlton and received first reading in the Legislature October 6, 1980. It was a bill entitled An Act respecting Economic Equality for Women in Ontario.

It was a bill which was to apply throughout Ontario and it was a bill, therefore, which implied government responsibility for the funding of the activities for which it called. I would refer also to a private member's bill put forward in the name of our NDP leader, Mr. Rae, which was debated on second reading.

It was entitled Bill 108, An Act to provide for Affirmative Action and Equal Pay for Work of Equal Value. Second reading was on November 17, 1983. In all these cases, you will find the activities of the Legislature surrounding these bills indicated they were in order. All the bills were unchallenged when they were presented and, while Mr. Rae's bill was defeated, it was given second reading and full debate in the Legislature in 1983.

15:50

If we move from bills that have addressed the question of equal pay in this Legislature and that have had quite a wide scope, particularly when compared to the bill in front of us today, we can look for other examples in which legislation brought forward by the Conservative government of the day was proposed for amendment in a very broad manner. In no case was any of these amendments deemed to be out of order.

I will speak to you briefly about what happened in the discussion on the Occupational Health and Safety Act. In committee of the whole, in the Legislature on December 14, 1978, members of the NDP caucus put forward a series of amendments that would have had the effect of significantly broadening the application of the occupational health and safety legislation.

If we turn to page 6114 of that debate in committee of the whole, an amendment was moved by Mr. Mackenzie of the NDP which would have widened the scope of the legislation by eliminating exemptions to the legislation. It would have had the effect of including domestics, teachers, professors and farmers within the scope of the Occupational Health and Safety Act. It is too bad it did not pass, but it was never suggested that it was out of order to present that amendment.

I take you on in that debate to page 6133, again on December 14, 1978. Mr. Bounsall of the NDP moved a deletion of an amendment in an attempt to include farm workers. Though the amendment did not pass, again it was accepted as being in order. In the same debate, Mr. Foulds of the NDP again moved to include another motion to include teachers and professors under the ambit of the health and safety legislation being debated on that day. Again the amendment failed, but it was never suggested that it was not in order.



On page 6143 of the same debate, Mr. Bounsall again moved an amendment to include small work places; in other words, work places with fewer than 20 employees, where the legislation did not provide for health and safety committees to be set up. The effect of Mr. Bounsall's amendment would have been to call upon the minister to set up the health and safety committee and have it function on behalf of the workers in establishments with fewer than 20 workers. Again, it was not passed but no one suggested it was out of order.

If we go further on in the same debate, Mr. Cassidy, my predecessor as the representative for Ottawa Centre, moved a motion which one can read on page 6151. That would have significantly increased the scope of the bill and it would have had the effect of having people who worked in offices, in sales, in libraries, in museums, in restaurants, in motels and in theatres come within the ambit of clause 8(1)(b) of the health and safety legislation.

In all those cases, the purpose of the amendments put forward by my caucus colleagues was to increase the coverage; to increase the number of workers who would be provided protection under the health and safety legislation then being debated.

In all those cases, which I draw to your attention with care, the amendments were accepted as being in order. They were not passed but they were certainly not judged to be out of order.

Mr. Gillies: I will be brief. I want to associate myself with the comments made by Ms. Gigantes. This is a funny procedure we are going through. We really should look at this in the standing orders that we are forced to debate in advance, based on what we anticipate your ruling to be. This is a rather strange situation, but it is the only way we can do it. I understand that you will be citing Erskine May with regard to the amendment of a government bill in committee.

Mr. Chairman: I may not now.

Mr. Gillies: You may not now; you may change it to fool us.

Mr. Chairman: I may alter my thrust as a result of what you said.

Mr. Gillies: My understanding is the ruling will question the expansion of the scope of the bill by amendment within committee. I suggest that there are numerous precedents for this. Ms. Gigantes mentioned some of those that came forward during the last minority government, 1977-81. I was not here at that time, but I could point back to the spring of this year when, in another committee, we were debating the minister's first-contract arbitration bill. I suggested two amendments to that bill. One was for the inclusion of construction workers who did not bargain province-wide, those not part of the industrial, commercial and institutional sector. That amendment was accepted and incorporated into the bill.

I made another suggestion at the time for part-time and occasional teachers to be included in the act. That did not come about, but in proposing that amendment, at no time was I challenged by the chair as to its possibly being out of order. While, through a very narrow reading of the parliamentary rule books, one could perhaps suggest that there is something out of order, in practice it has happened all the time in this Legislature. I suggest that it has happened particularly during periods of minority government.

We are told by many of our constituents that one of the things they like

about minority government is that things seem to get done and that every member of the House, if he or she chooses, has a role to play in the governing process during minorities. I agree with those sentiments. We are in this committee about to show once again one of the benefits of minority government where the majority of members of this House have expressed a point of view which they will be putting forward by way of amendments. Those amendments will be debated in a very democratic fashion and carried or not carried, as the committee sees fit.

I urge you to consider these points in making your ruling. I believe what we are seeing in this committee, or what we hope we will be seeing, is parliamentary democracy at its finest, where the voices of all the members of the chamber will be heard and judged impartially. That can only happen if the amendments of all three parties are heard.

Mr. Polsinelli: I appreciate the opportunity to take part in this discussion dealing with certain fundamental amendments to the government bill dealing with pay equity in the public sector. I am sure the members of this committee are aware that this government and this party campaigned during the last election and promised the people of Ontario that they would introduce pay equity. The government has, in maintaining its promise, established an agenda and has established a phased-in approach, as have many other jurisdictions that have implemented pay equity in the public sector.

16:00

Manitoba has staged the approach in the narrow public sector and then in the broader public sector. This government has chosen to come with two bills in that phased-in approach. The first bill deals with pay equity in the narrow public sector. The second, which we are expecting imminently, will deal with pay equity in the broader public sector and in the private sector.

It is a record I am very proud of. Little more than nine months after having formed the government, we maintained our promise and introduced pay equity legislation in the narrow public sector. A short 16 months after having formed the government, we are imminently awaiting the introduction of a bill in the Legislature dealing with pay equity in the broader public sector and the private sectors.

Mr. Chairman, I understand you will be making a ruling today dealing with certain procedural matters and the amendments that have been placed before this committee from both opposition parties. I agree with Mr. Gillies that we have to look at parliamentary democracy.

When he talks about parliamentary democracy at its finest, that is something that has been established through hundreds of years of parliamentary practice. Erskine May and Beauchesne are both noted authors on parliamentary democracy and practice. Rules which have been established and have come up through hundreds of years of parliamentary practice and debate are there to protect the public, the people of Ontario and the government in ensuring that things are done in a parliamentary fashion and in a fair way.

I would like to deal specifically with why I believe the amendments are out of order. I refer you to section 101 of the standing orders of the Legislative Assembly, revised as of April 1986. It indicates that the standing orders of the House are to be observed in committees. We can understand that the standing orders of the House apply to this committee and to its procedure.



I then refer you to section 15 of the same standing orders, amended as of April 1986. Section 15 reads: "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown."

The amendments we have before us from both opposition parties would require the imposition or the allocation of more public funds than have already been allocated, and simply on that basis the amendments are out of order. However, that is not enough in itself and, in my opinion, it is not in itself sufficient reason we should repudiate these amendments. I think we should look at what Mr. Gillies has pointed out, which is parliamentary practice and tradition, the rules of democracy and fair play that have developed over hundreds of years of parliamentary practice.

I would like to quote to you certain sections from Erskine May. He talks about what is and not appropriate as an amendment in a committee. I refer to page 521 of the 19th edition, where he talks about "an amendment which is out of order on any of the following grounds," lists a series of them and then says, "if it...is beyond the scope of the bill." Clearly, these amendments greatly expand the scope of the bill.

Erskine May goes to say on in point 12, "Amendments or new clauses creating public charges cannot be proposed, if no money resolution or ways and means resolution has been passed, or if the amendment or clause is not covered by the terms of such a resolution." He goes on to say that "this rule...is of fundamental importance."

Erskine May is not talking in this edition about our standing orders of practice and procedures, but he is talking about parliamentary democracy. He is talking about fair play.

The other noted author in this field is Beauchesne. He reiterates essentially the same things. On page 231 of Beauchesne's fifth edition, 1978, he indicates, "An amendment which is outside the scope of the bill is out of order and cannot be entertained, unless a special instruction has been given by the House to the committee."

We do not have an instruction from the House to this committee indicating that we should spend more public money or that we should expand the scope of the bill. When the House dealt with Bill 105, it dealt with the narrow public sector, and that is what we have before us.

Beauchesne goes on to say that amendments are out of order on additional grounds. He mentions, "An amendment is out of order if it imposes a charge upon the public Treasury, if it extends the objects and purposes, or relaxes the conditions and qualifications as expressed in the royal recommendation." Clearly, the majority of these amendments before us from both opposition parties do that.

That still is not enough because both of the previous speakers referred to practices in the Legislature and in minority situations. They indicated that because certain motions and bills which were clearly out of order under these rules had been accepted by the assembly, they should be acting as precedents for this committee and that, in effect, the standing orders had been superseded by the acceptance of the House of those amendments and those bills which were out of order.

I reject that proposition and I ask you to reject that proposition simply on the grounds that if an amendment or a bill that is out of order is introduced and not challenged, and it happens to work its way through the cracks, that, in my opinion, does not establish a new parliamentary practice or tradition.

I do refer you, however, to certain other practices that have occurred in this Legislature. I refer you to May 4, 1970, in dealing with the Fisheries Loans Act. In Hansard, on pages 2244 to 2255, in committee of the whole, Mr. Nixon moved an amendment to the bill which had the effect of broadening the pool of possible applicants under the proposed loans program. This was not an absolute increase, as the wording of the amendment allowed ministers the discretion to grant or not grant the loans. The amendment was argued to be out of order on two principles. First, it increased the amount of expenditures, and second, it specifically allocated those expenditures in a particular way.

The opposition at the time argued that, because the ministerial discretion had been retained, the amendment did not do either of these two things. The amendment was ruled out of order on the basis that it was possibly broadening the amount of money the government would have to have spent.

I refer you, Mr. Chairman, to another item in this House, on November 27, 1979, a mere seven years ago, dealing with compulsory automobile insurance plans. In Hansard, on pages 4915 to 4917, in committee of the whole House, Mr. M. N. Davison moved an amendment to change the definition of insurer under the bill. The effect of such an amendment would have been to create an Ontario automobile insurance plan. In debating whether the amendment was in order, Mr. Breithaupt referred to the principle of the bill as debated and approved at second reading. Mr. Breithaupt stated:

"That principle is twofold: one, the provision of compulsory automobile insurance within Ontario; and, two, its provision through the present insurance industry. As a result of that, any attempt to amend this is clearly not the principle of the bill that was passed in this House on second reading."

The chairman concurred with that view and ruled that amendment out of order.

Mr. Chairman, with your indulgence, I have two or perhaps three more examples I would like to bring to your attention.

Mr. Chairman: You are on a roll.

Mr. Polsinelli: On June 16, 1980, in dealing with the Ontario Pensioners Property Tax Assistance Act, Hansard pages 2870 to 2873, in committee of the whole House, Mr. Peterson, as he then was, moved an amendment to add a section to the proposed bill to establish a minimum floor for payments under the bill. In debating whether the amendment was in order, the Honourable Mr. Wells stated that: "...rulings on an amendment's being in order must focus on the effect that motion has, rather than merely on the words."

Mr. Wells went on to underline the fact that under standing order 15 not only would the proposed amendment increase the expenditure but it would also direct an expenditure. He said: "What I am saying is that an amendment need not have the effect of directing increased expenditures. We must remember that it need not just direct increased expenditures to be out of order; it need only direct an expenditure to be out of order."



The chairman ruled the amendment out of order and the chairman's ruling on that occasion was challenged and upheld by the House in a vote.

I have a number of other examples which I choose not to bring to your attention except for one fairly recent one that occurred on February 11, 1986. It is recorded in Hansard on pages 4053 to 4056. It deals with the Teachers' Superannuation Amendment Act. At that time, during the committee of the whole House, the member for Scarborough Centre (Mr. Davis), whose company we have the pleasure of today, moved an amendment to open the window for retirement from three years to five years. The effect of that amendment would have been to change the cost of the program from approximately \$600 million to close to \$1 billion.

16:10

Mr. Nixon, the House leader, suggested the proposed amendment would be out of order under standing order 15 because it would involve the use of additional public funds. The chairman ruled the amendment out of order and stated: "There is ample precedent. This came up about a month and a half ago. When government moneys are being expended, or the time is being extended which will cause the addition of government moneys to be expended, the motion can only be brought by a minister."

That ruling was challenged by the Conservative party, and the members of this minority Legislature of which we have the honour and privilege to be members upheld the ruling of the chair and indicated and ruled that amendment was out of order.

I have many other precedents dealing with similar situations in the House of Commons in Ottawa. There are precedents in the British House of Commons. It should not be necessary for me to go on citing countless precedents. I chose to recite the ones that dealt essentially with the practice of this House in this province.

I urge you, Mr. Chairman, to rule the amendments are out of order, and I urge the members of this committee not to challenge your ruling. By challenging it, they would be putting aside hundreds of years of parliamentary tradition. They would be putting aside years of developing rules of procedure and practice that ensure that the game is played fairly, years of developing rules and procedures that are there and are intended to serve the best interests of the people of Ontario.

I reiterate my opening remarks. The Liberal government of Ontario has chosen an agenda; we intend to bring pay equity to the narrow public sector, the broader public sector and the private sector. We ask the members of this committee to respect our agenda and to work with the bills we will introduce.

Ms. Hart: First, it is all very interesting to cite precedents about what happened when amendments were not challenged. In my submission, they have no relevance to what we are doing here today. The amendments have been challenged. We must deal with the parliamentary tradition that has developed over centuries and not trifle with that lightly.

The other remark I would like to make before getting into more precedents is that private members' bills are rarely challenged in any way. In the parliamentary tradition, it is thought that is the time for private members to bring forward legislation they feel strongly about. In going back over the precedents, and I may not have gone far enough, I could not find any

challenges to private members bills. I submit that is as it should be, because the government always has the right not to call those bills to come forward even if they pass into second reading. It can be put simply: When there is not a challenge, that does not lessen the impropriety of the amendments. In our law, ignorance of the law is no defence. We all know that to be true.

The amendments that have been put forward by both opposition parties to increase the coverage in the public service necessarily increase the financial commitment of the government. The precedents are legion that when that is the case, the amendments are out of order. Mr. Polsinelli has referred you to one or two. I would also like to refer you to one or two. There are many; we could go on all afternoon with precedents.

The first one I would like to refer you to is the debate that took place on July 4, 1977, recorded in Hansard at pages 312, 313 and 325. The Ontario Youth Employment Act was being discussed during committee of the whole House. Mr. Gaunt moved that the time period for qualifying as an eligible employer under the bill be changed from one year to three months. The validity of the amendments under the standing orders was challenged on the basis that the amendment had the effect, by virtue of lessening the criteria, of directing the allocation of more public funds, contrary to the spirit and the letter of standing order 86, which is now standing order 15.

The amendment was ruled in order because of the permissive nature of the payments. The wording was that the minister "may" make grants, etc. to eligible employers. I quote from Hansard: "While the effect of the amendment is to broaden the definition of those eligible to receive grants, it would not make the payment of them obligatory. In other words, it would not specifically direct an expenditure, although it would permit such a payment should the crown wish to make a payment. It would appear to the chair, therefore, that the financial interests of the crown are protected and an amendment is in order." In reading Hansard, it is perfectly clear that it is only because it was a permissive amount that was to be paid that the amendment was ruled in order.

Another precedent I would like to refer you to is from December 12, 1983, on page 3947 in Hansard, on the Public Sector Prices and Compensation Review Act.

During the debate at committee of the whole House, Mr. Swart moved an amendment to the bill that would have the effect of increasing the number of persons employed by the commission associated with the Inflation Restraint Board. The chairman suggested that the amendment be changed so that it conformed to standing order 15, whereby proposals for the expenditure of funds are prohibited except where proposed by a minister with the approval of the Lieutenant Governor. This change was agreed to by the member, again based on long-standing parliamentary procedure.

Another precedent to which I refer you is on page 2037 of Hansard on the Ontario Unconditional Grants Amendment Act on June 24, 1981. During the committee of the whole House on this bill, Mr. Epp moved an amendment to change the per capita amount given to municipalities for police forces so that it would be uniform across the province. The original bill gave \$17 per capita to regionalized areas and \$12 per capita to nonregionalized areas.

The chairman ruled the amendment out of order, agreeing that it was well known to the member that only the government or a minister could bring forward a motion to spend money. The chairman's ruling was not challenged.



I could go on and on. Perhaps I will bring up one more. There are very many in the House of Commons. One I will refer you to is from June 23, 1977. It was on June 21, during consideration of the report stage of Bill C-27, An Act to establish the Department of Employment and Immigration, the Canada Employment and Immigration Commission and the Canada Employment and Immigration Advisory Council, to amend the Unemployment Insurance Act, 1971, and to amend certain other statutes in consequence thereof.

The Speaker expressed reservations on the acceptability of an amendment moved by Mr. Rodriguez, the member for Nickel Belt, to make benefits payable to women who can prove the impending adoption of a child. When debate reopened on June 23, the Acting Speaker made a final ruling.

The issue was whether a motion or amendment is acceptable when it appears to go beyond the scope of the clause it seeks to amend and when it entails an additional expenditure from the public Treasury, without being accompanied by a royal recommendation.

The decision was that the motion was unacceptable. The reasons given were: (1) The motion goes beyond the scope of the clause it seeks to amend; and (2) it would have been brought in as a separate clause, in which case it would still have been rejected, because it involved an expenditure of public moneys that only the crown may authorize.

I neglected to give you the reference there. It is Journals, page 1213; Debates, page 752, June 23, 1977. I have many more in the House of Commons. I merely raise that to make the point.

16:20

There are many other precedents that Mr. Polsinelli did not refer to which deal with the expansion of the scope or the principles of the bill. I will refer you to just one, and that is June 30, 1981, Hansard page 2270, the Employment Standards Amendment Act. During the debate in committee of the whole House, Mr. Laughren moved an amendment to the bill under consideration which had the effect of establishing a job protection board. This board had not been included in the original bill.

The Chairman ruled: "This amendment is outside the scope and general definition of the bill. I am going to rule this is not an amendment and is therefore out of order." The Chairman's ruling was not challenged, but in further clarification he also stated, "The ruling is that in the second reading of the bill in the House there was no approval given for the establishment of a board, and on the basis of that I have declared the amendment out of order."

There are a number of precedents dealing with the establishment of boards that were not established in the original legislation. I bring that one to you as illustrative of the principle of going beyond the scope of the bill. In conclusion, I lend my support to the proposition that the amendments that have been made in virtually every case go beyond the scope of the bill as it was referred to the committee and necessarily require a further expenditure of money by the crown. In both instances, for both reasons, the precedents are legion that they are out of order.

Mr. McClellan: I will try to be brief, but this is an important discussion, as you will appreciate, Mr. Chairman. A number of members have obviously given a lot of thought to a ruling that none of us has even seen,

but I think we are anticipating some of the arguments you will be making.

The House has already passed in the second reading debate the principle of the bill that the House supports affirmative action being taken to provide for pay equity for employees in the public service of Ontario. That principle has already been established by the House, but we have a problem because there is a difference of opinion about what is meant by the phrase "public service of Ontario."

The government seems to be saying that public service of Ontario includes only those who are public servants under the Public Service Act and that, therefore, any amendments that broaden the bill to define public service to include public servants who are not under the jurisdiction of the Public Service Act is somehow an illegitimate broadening of the scope of the bill.

There is a slight problem with that argument. If you look at the definitions section on page 2 or, more particularly, at section 2 of the bill, the application section of the act, you will see that the act applies to public servants "as defined in the Public Service Act." It says "public servants," not simply employees under the Public Service Act.

It goes on to say in clause 2(b) that the act applies to the Niagara Parks Commission, the Liquor Control Board of Ontario, the Liquor Licence Board of Ontario, the Ontario Housing Corp., the Toronto Area Transit Operating Authority and the Workers' Compensation Board and their respective employees. I do not have the exact count, but I think it is a group in excess of 10,000 employees.

Therefore, do not make the argument to me that this bill applies only to public servants as defined in the Public Service Act and that any attempts to broaden the scope of the bill to include other public sector workers is somehow an illegitimate extension of the scope of the bill. I respectfully submit that is absolute nonsense.

I do not know how you can argue that this is broadening a bill that by definition includes Public Service Act employees plus something in the order of 10,000 additional workers. I am guessing. I am sure the Minister of Labour would be able to give me a more accurate number of the thousands of workers listed in clause 2(b) of the bill. It does not follow that there is any broadening of the scope of the bill if it is extended to include other categories of workers. The bill already extends substantially beyond the one category of public servants under the Public Service Act.

The minister will be aware that a number of separate bargaining agents and unions are involved in the groups that are identified in clause 2(b). Clause 2(c) spells out even further that this act applies to "bargaining agents representing employees to whom this act applies." It is very clear we are not just dealing with public servants who are members of the Ontario Public Service Employees Union and come under the terms of the Public Service Act. It is absolutely clear that the act is already broadened considerably beyond that to include workers who are represented by the Canadian Union of Public Employees and a number of other bargaining agents as well and that the jurisdiction of the act is not as narrow as certain spokespersons for the government would have us believe.

Since the process of broadening has already been initiated by the government, it is perfectly within the scope of this committee to identify other categories of workers and statutory references to groups of employees



and to add them into the bill, consistent with the principle that we are going to take action to provide for pay equity for employees in the public service of Ontario.

With respect to the precedents, I was amazed to hear one of the Liberal spokespersons arguing that precedents around here have no relevance or significance. Ms. Hart was indicating that it did not matter what kind of precedents were being cited having to do with the traditions of this parliament in Ontario and that something having to do with the British House of Commons and hundred of years of parliamentary democracy was much more important.

Mr. Chairman: Ms. Hart has a point of personal privilege.

Ms. Hart: What I said was that the precedents that dealt with unchallenged amendments had nothing to do with what we were doing here and that we had to look at the precedents where the amendments were challenged.

Mr. McClellan: I think that clarified my point rather than Ms. Hart's, but on a number of occasions this House has accepted legislation attempting to establish equal pay for work of equal value. It has been accepted by Speakers in the House and by chairmen of committees. I hardly think that, when past Speakers have accepted legislation--in fact, Mr. Bounsall's bill was not just accepted for first reading, it passed second reading and was sent to committee.

Mr. Polsinelli: So what?

Mr. McClellan: The member for Yorkview says, "So what."

Mr. Polsinelli: What does that have to do with this bill?

Mr. Chairman: May we have some order, please? Mr. McClellan has the floor.

Mr. McClellan: The precedent is clearly relevant to an interpretation under section 15 of the standing orders with respect to the prohibition of specifically directing the allocation of public funds. This is my final point.

You will understand, Mr. Chairman, the interpretation of that section is not a simple matter. It is not always clear what that section means. In the language of the standing orders, it would "specifically direct the allocation of public funds." That phrase is open to a wide interpretation, and all the precedents that have been cited illustrate that point. On some occasions, the House and chairmen of committees have accepted motions to establish separate agencies within ministries. I moved to establish the voluntary adoption disclosure registry in the Child Welfare Act of 1978. It was accepted and passed, and it was ruled that it did not involve a specific direction of the allocation of funds, although obviously there was an indirect allocation of public funds.

16:30

A number of other precedents have been cited to you in trying to prove either one way or the other that a broadening of the scope of this bill violates the precedents of this House with respect to the question of allocation of public funds. In an area which is not crystal clear, the one

precedent you have as to the application of section 15 to the question of equal pay for work of equal value legislation supports our argument that our amendments are in order, because on a number of occasions in the past, the House has accepted legislation from the opposition imposing pay equity in the public sector.

Those are the precedents with respect to the interpretation of the standing order on this legislation. As you try to figure out what that subclause means, you have to be guided by the precedents and traditions of this House dealing with legislation that is most analogous to the legislation in front of us this afternoon.

On both the grounds of potential objection with respect to the scope of the bill, it is clear that the bill already extends beyond the Public Service Act and the additional broadenings or extensions are perfectly consistent with the principle of the bill and with the definitions. With respect to the question of the need for a separate recommendation, you have ample precedent already cited this afternoon that pay equity does not violate section 15 of the standing orders when moved by the opposition.

Mr. Charlton: I will pick up where Mr. McClellan left off. I do not want to go through a lot more precedents. You have heard a lot of precedents already this afternoon. It is very important for us to understand exactly what those precedents said, because they told the whole story. Even if the two members of the Liberal Party who cited precedents do not fully understand what those precedents mean, I am sure you will, Mr. Chairman.

The precedents have stated clearly how this Legislature has viewed the question of money with regard to opposition bills or amendments in the past. Mr. McClellan alluded to it. Let me put it a little more frankly and clearly.

This Legislature, the Speaker of the Legislature, the Chairman of committees of the whole House and the chairmen of standing committees have followed the practice of ruling bills and/or amendments in order, even when they would require the expenditure of funds, if the specific direction or allocation of those funds was not mentioned. They would rule bills and amendments out of order when the specific allocation or direction of funds was mentioned. That is the tradition of this House. It is the issue you have to rule on that was set out clearly in the precedents quoted to you today by all parties, Mr. Chairman, and that is the practice on which you have to make your ruling here today.

Mr. Callahan: Mr. Chairman, I think the mettle of this Legislature is going to be tested today in trying to overrule you, if your decision is that this bill cannot be expanded, unless we are prepared to put the political motivations on the back burner and look at what will happen because of our decision here today in terms of whether we have rules any more or whether this place is run just on the basis of what is expedient from a partisan standpoint.

I look at the principle being attempted here, and I say to the members who would like to enlarge the bill that I have heard and I accept their arguments. I believe that people in this Legislature speak in good faith when they propose these expansions. From my own practice, from what I did before I came here, I think that what keeps us from going at one another's throats, other than vocally, is the rules. Without rules, you have chaos. If this committee today tries to set aside the chairman's decision, we might as well take the rule book, throw it away and do everything on the basis of partisanship.



In a minority parliament, that would mean that nothing could be done unless the opposition parties were prepared to support it. That flies in the face of the whole tradition of Her Majesty's loyal opposition. Her Majesty's loyal opposition, as does the government, has to work within the framework of rules. If we make a decision today that throws out precedents that probably go back to the year 1066 or shortly thereafter, it will resound around this parliament for many years to come.

You will be made to look like people who are prepared simply to thumb your noses at the rules that allow us to carry on civilized debate in this parliament. You will have made that decision, and although its political fallout may be good or bad, the fact that you have fractured the rules of this parliament is something you people will have to live with.

If judges were to make decisions based on some quirk they had, as opposed to what was the law or what was good for the people, no one would ever be able to advise a client on what the result of a particular set of facts would be. Our traditions, both in Ontario and in any Commonwealth jurisdiction, are based on the fact that we have precedents we can look to in order to determine how something will proceed.

We could enlarge this scenario to a situation where someone might try to enlarge a bill to such an extent that it would result in an expenditure by the province that would literally require every taxpayer to contribute additional funds to bail us out. If you are prepared to go that route, then you leave the rules open for either this minority parliament or one in the future to make that decision.

There is an old adage in the law that hard cases make bad law. The basis for that statement is, for example, judges who would very much like to rule in favour of the litigant because of the emotional situation. Perhaps the person is a paraplegic and the judge wants to give damages but the law does not support that. The judge may very well be influenced to do it, but the adage comes from that, from common law statements.

Hard cases make bad law. That is exactly what we will be doing here today. If we are prepared to throw the rule book out and say there are no rules any more, it means that any precedent, any rule we have--and these are mandatory rules. Standing order 15 is mandatory. It does not tell us that we can or we may; it is mandatory. If we do this, we might very well be open to the challenge by the public that we have acted improperly, that we have ignored the rules of the game.

If that happens, and if the opposition is prepared to ride out that criticism, that is fine. But we will have set a course of action from which we will never be able to get back on the rails again. We will have deviated from a long-standing tradition. I hope to God that the partisanship in this committee will be superseded by respect for precedent and parliaments to come and will not necessarily be on the basis of what you can achieve this time.

16:40

Ms. Fish: Allow me at the outset of my remarks to assure Mr. Callahan that my submissions and the manner in which I will conduct myself on this issue will most certainly be with regard to precedent and the integrity of parliaments of the future.

In that regard, it might be appropriate not to note so much the specific individual precedents, because I do not wish to take the time of the committee

in repeating submissions that have been aptly made by other members of the committee, but rather to note that today we have received submissions on precedents that suggest a ruling out of order of some amendments. I have also received submissions on precedents that suggest ruling the same amendments in order.

What is unique in the democratic process and the rules by which we conduct ourselves in this parliament and in this parliament's committees is precisely the opportunity for argument to be made, for submissions to occur and for a chairman to weigh those submissions and make a decision on items that are clearly arguable.

It is further worthy of note that in the hundreds of years of tradition that are cited or in the more recent standing rules of our parliament the chairman's ruling can always be challenged. The object of ensuring the safety that a chairman's ruling may be challenged is surely not to presume that a challenge would never be successful and would always result in the chairman being sustained. If that were part of the tradition, why would it be there?

Mr. Chairman, I submit that the opportunity to challenge your ruling or that of any other chairman of any standing or select committee, or indeed of the Speaker of our parliament, is precisely to provide an opportunity for the committees or, in the case of the chamber, the Legislative Assembly to make the final judgement with respect to what is or is not in keeping with tradition and what is or is not in order, precisely to order the business of the assembly or committee.

Rather than suggest that there is something woefully undemocratic or wretchedly different in wrenching procedures or something remarkably new and unique that steps outside a tradition hundreds of years old in challenging a ruling of the chairman and potentially overturning that ruling, I suggest this. Possible challenge and possible overturning is the essence of the democratic process that those of us on this side of the committee very much support and very much observe.

I note Mr. Callahan's interesting comparison with judges. I suggest to him that in my experience it is common for members of the bar to make submissions to judges hearing cases and to cite a variety of precedents. One commonly listens in any number of cases to advocates for either side. In some cases it is the crown versus the defence attorney, and in other cases it is a civil proceeding with private solicitors making submissions and each citing a separate set of precedents to support a particular view. This indicates rather clearly that the laws and the rules of this assembly are subject to interpretation in their application and final decision. The direction in which a decision might go in any individual case is arguable.

Finally, to Mr. Polsinelli, who suggests that the rules that govern us have given us years of ensuring things have been done fairly, I agree. Those rules provide for a challenge of the chair; they contemplate the occasional overturning of a chair's ruling. But on the question of whether there is an agenda of the Liberals here to be respected, on the citing of Mr. Polsinelli that there is some other legislation to deal with pay equity in a different public sector from what the government chooses to define in this bill, or pay equity in the private sector, it is difficult to respect an agenda when no legislation has been introduced.

The most recent discussion we have had about any possible legislation to deal with a broader public sector or the private sector in pay equity was



responded to by the government House leader saying: "No, no, no. It is all still very much under discussion. It is weeks away at the very best. No, no, no."

Mr. Polsinelli, I do not think that is a political agenda that is appropriate for respect. Rather, I consider an agenda appropriate for respect to be one that looks to the democratic procedure of our parliament and of this committee, that respects the opportunity to argue different points of view on matters being in order or out of order and that provides for an opportunity for a chairman's ruling not only to be heard but also to be challenged, potentially to be overruled.

Mr. Chairman: Let me say to all members of the committee, by way of response, that there have been moments in the House and in committees when I have been most impressed with the level of debate, and I say this in a totally nonpartisan sense, and the level of the research and work that has been done in preparation for a particular debate. I want to compliment my colleagues at the outset of my remarks, knowing that whatever ruling I make will not be necessarily supported by each and every one. On a personal basis, I have been very much impressed with the arguments that have been put forward and the work that has obviously gone into your presentations.

Whether the chairman happens to be particularly sympathetic or emotionally involved in any way, shape or form, as was suggested in some of the remarks earlier with respect to the amendments being proposed, is really not at question here. I have some sympathy for amendments that are being proposed, but that will not alter my decision as to the way in which I shall proceed on the basis of my interpretation of the bill as it has been directed to this committee by the House.

However, the chairman does have to be directed in the decision that he or she makes by the business that has been directed to this committee by the House, and the chairman's interpretation must be based on precedents that have been established by other committees and the function of the House, as has been stated by other speakers, that has gone back for many years.

By way of clarification, I would like to say that each committee determines the precedents that are before it, based on the individual circumstances prevailing around a particular bill and a particular set of amendments, as they relate to that bill. I had to take that into consideration in the decision I am about to deliver to you. In my research there were instances which brought to my attention that in the past there were times when no decision was made about the expansion of a bill by way of amendment or where the scope of a bill was expanded, either financially or by way of the wording, and the chairman decided not to rule against the particular amendment.

I do not believe and I am not going to interpret that this indicates the amendment was necessarily in order, because equally as convincing arguments can be put forward in other circumstances where amendments have been ruled out of order by the chairman, on two grounds in particular. The first is that the scope of the bill has been expanded. The second was cited in some of the examples that were given, one being the education bill in the amount of \$600 million, I believe, being expanded to \$1 billion. Where the financial requirement on the part of the government is substantially increased, it is the right of the chairman to make that interpretation and to rule that it is out of order because it expands the scope and the financial obligations contained in the bill.

16:50

At this time I must indicate some concerns regarding the tabled amendments to Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

The bill as drafted identifies those public servants as defined in the Public Service Act and employees of agencies, boards and commissions specified in subsection 2(b) as the employees to be affected with the application of this bill. It makes it very specific as to what this bill intends. The identified employees are to be eligible for consideration under the act by comparison between a representative job level in a predominantly female group of jobs and a job level in a predominantly male group of jobs in terms of relative pay and relative value of work performed.

The bill provides for the establishment of a commission to review and consider pay equity plans. Also, a mechanism is provided for a complaints procedure to be considered during and after implementation of the plans. A time frame is addressed in the bill as well as a basic rate of compensation upon approval of a plan.

The bill has been accompanied by a recommendation of the Lieutenant Governor, which is the authority for expenditures incurred with the passage of the bill. As specified by standing order 15 and section 56 of the Legislative Assembly Act, any additional charges to the motion for the appropriation of funds from the consolidated revenue fund would be admissible only if proposed by a minister of the crown and accompanied by the recommendation of the Lieutenant Governor.

Having kept these facts in mind when reviewing the proposed amendments, I have reached certain conclusions regarding the implications of these amendments if adopted. I will review the amendments as tabled in packages by each caucus that, in my opinion, appear to be out of order.

With respect to the Progressive Conservative amendments, I refer to the proposed amendment to section 2, which would expand the application of the bill beyond the application as specified in section 2. I therefore find this amendment to be out of order on the ground that it is beyond the scope of the bill. Further, by expanding the application of the bill to include other employees as named in the amendment, it is my opinion that additional charges would be made against the consolidated revenue fund. The amendment is therefore also out of order on the ground that it would create a public charge, is not proposed by a minister of the crown and is not accompanied by a recommendation of the Lieutenant Governor.

In ruling the proposed amendment to section 2 to be out of order, I must also rule those amendments dependent upon the proposed amendment to section 2 to be out of order; that is, the proposed amendments to subsection 3(1), clause 28(1)(d) and subsection 28(3) and the proposed schedule.

The proposed amendment to subsection 3(2) is dependent on the proposed amendments to subsection 3(1) and would eliminate the distinction of predominantly female and predominantly male groups of jobs. These amendments would therefore allow a wider application for comparison of groups of jobs, which broadens the scope of the bill and imposes charges to the consolidated revenue fund other than those originally in the bill as drafted. Therefore, I must rule the amendment out of order. In addition, the proposed amendments to sections 5 and 7 of the proposed government amendment, subsections 12(1) and



14(1) and section 26, being dependent on the proposed amendments to subsections 3(1) and (2), must consequently be ruled out of order.

Section 11 of the bill addresses the time frame of adjustments to be made as soon as possible after the plan is filed with the commission. The proposed amendments, subsections 11(2a) and 11(3a), would impose retroactive adjustments to February 11, 1986, which would create charges to the consolidated revenue fund beyond those proposed in the bill and under the authority of the recommendation of the Lieutenant Governor. They are, therefore, out of order.

I would now like to address the amendments tabled by the New Democratic Party. In some respects, my rulings will be the same as or similar to rulings I have made on the amendments proposed by the Progressive Conservative Party.

The proposed amendment to section 2 would add groups of employees covered under acts other than those specified in section 2 of the bill as drafted. In addition to being beyond the scope of the bill, the amendment would impose charges on the consolidated revenue fund, and I must find it out of order. The proposed amendment to sections 3 and 28 and the proposed schedule are dependent on section 2. Consequently, I find them to be out of order.

The proposed amendment to substitute new sections 7 and 8 for those set out in the bill is dependent on the proposed amendment to section 3 and removes the gender reference from the bill. It also increases the minimum adjustment established in clause 11(3)(c) of the bill as drafted from one per cent to three per cent of payroll. In the proposed section 8, the date for adjustments would be retroactive to February 11, 1986. This proposed amendment would increase the adjustments to be paid in accordance with subsection 11(3) of the bill as drafted. The proposed amendment, therefore, creates public charges beyond those contemplated by the bill and, in my submission to the committee, is out of order. In addition, the proposed amendments to sections 25 to 27, being dependent on the amendment to section 7, are also out of order.

The proposed amendments to sections 12 to 16 would accelerate the process outlined in existing parts III to VI, imposing charges on the consolidated revenue fund earlier than proposed by the bill as drafted and are out of order. The proposed amendment to subsections 20(2) to (4), inclusive, being dependent on the previous amendments, is also out of order.

Proposed amendments adding new sections 20a to 20c introduce a new procedure to the bill and the concept is beyond the scope of the bill. The creation of an appeals tribunal would impose additional charges on the consolidated revenue fund and, for these reasons, I find the amendment out of order. As the proposed amendments in sections 21, 22, 23, 24 and clause 27(c) are dependent on proposed sections 20a to 20c, I must also find them out of order.

The amendment proposing the addition of new clauses 29(a), (b), (c) and (d) would amend statutes not before the committee at this time and is out of order. I refer you to Beauchesne, citation 773.

In addition to the abovementioned amendments, there are several proposed amendments to delete certain sections of the bill. I am aware that the intention is to draw the chair's attention to the fact that members may wish to speak to the section. I would, therefore, only refer members to pages 556 and 557 of May's 20th edition, indicating that it is only necessary that they vote against the clause at the time the question is put.

We have allowed considerable debate on this matter prior to my ruling with respect to the individual amendments, specifically because the ruling of the chairman is not debatable. I will now close my remarks by indicating, if you are not in favour of the chair's decision, you may challenge it, but it is not a debatable matter at this point.

17:00

Mr. Gillies: Mr. Chairman, with great respect, I must challenge your ruling.

Mr. Chairman: The ruling has been challenged.

Mr. McClellan: Do we have a division?

Mr. Chairman: We will have a division and therefore a recorded vote in connection with this matter. I ask all members of the committee to give full and thorough consideration to the vote that is to be put before you. Before putting that vote, I will ask the minister whether he has any comments he wishes to make following the taking of the vote.

The minister indicates that he does.

Ms. Gigantes: Is this a debate of the motion?

Mr. Chairman: No. I said following the decision of the committee. It was an anticipatory comment made in expectation of what might follow, having heard the debate in its fullness just a few moments ago.

Mr. McClellan: Maybe we could have a 20-minute recess.

Mr. Chairman: Would that be the wish of the committee?

All right. We will have a 20-minute recess before taking the vote.

Ms. Gigantes: Until 5:20 p.m.?

Mr. Chairman: Yes.

The committee recessed at 5:03 p.m.

17:24

Mr. Chairman: Members of the committee, I believe we are all assembled and in place again. I will now put the question. Shall the ruling of the chair be sustained?

The committee divided on the chairman's ruling, which was negatived on the following vote:

Ayes

Callahan, Hart, Polsinelli, South.

Nays

Charlton, Davis, Fish, Gigantes, Gillies, Rowe.

Ayes, 4; nays, 6.



Mr. Chairman: The determination which was made by the chair in connection with the appropriateness of the amendments, as cited in my statement, has been turned over by the committee. You have not supported the ruling of the chair. Previously, I asked the minister whether he wanted to make any comment before we went into the amendments. That is now the order of business, as outlined in my earlier statement. We will start with section 2, I believe it is, based on the agreement that we reached among all members of the committee. Prior to doing that, I will ask the minister to make his comments.

Hon. Mr. Wrye: Thank you, Mr. Chairman. I express the great disappointment of the government that your ruling has been successfully challenged. We will be prepared to discuss the substance of the amendments, but we are most disappointed because the amendments are clearly and unequivocally out of order. We think it is irresponsible on the part of the opposition members to have taken the action they have taken. Clearly, in a minority parliament, we have to understand the numbers ultimately, and the numbers have spoken in terms of a six-to-four vote.

I want to leave for the record that this decision of this committee and challenge to your ruling, Mr. Chairman, which I think was well argued, is not some minor trivial matter, as the member for St. George (Ms. Fish) has suggested. She suggested that somehow this was just the essence of the democratic process. We will now continue and turn to section 2 of the act as we begin to discuss the amendments which will be put by the opposition parties. I say to both opposition parties that the government will watch how these matters proceed and will take the amendments and attempts to change the legislation under advisement.

Clearly, we have indicated our agenda. Our agenda was to bring in a piece of legislation for the narrow public sector, for those under the Ontario public service and the six agencies which bargain under the Crown Employees Collective Bargaining Act. As we have stated on any number of occasions, we will be bringing in a second piece of legislation to encompass the broader public sector and the private sector.

I may have more to say at a later time, but very clearly, the government's approach is not unique to this jurisdiction. It has been used in other jurisdictions both in this country and elsewhere. We thought it was a reasonable and responsible approach. We will see what amendments carry at the end of the day. The government will take all these matters under advisement in terms of proceeding with the legislation.

Mr. Gillies: That was a good response. I am pleased with the decision of the committee. Let us not forget that the decision of the committee, which now stands, is that the amendments are in order and that we will be proceeding to consider them. I hope the minister will keep that in mind as, apparently, the decision of the committee does not seem to have registered on him. However, we have half an hour left this afternoon to do some good work on processing the amendments, and I suggest we get on with it.

Ms. Gigantes: I appreciate the understanding that has been established in this committee of how we are going to proceed with this bill. I am sorry the minister does not appreciate it. It is irresponsible, if I may say so, on the part of the minister to say that we have behaved irresponsibly. We have behaved in a very serious manner and we did so with a very clear goal of establishing equal pay for work of equal value for the full public sector in this province.

The minister and members of the Liberal Party have suggested that we are upsetting the government's agenda. The government's agenda, as of the end of May 1985, was to table legislation for both the public and the private sectors before the end of the first session of the new parliament. That first session ended in February 1986. Further, we have waited in vain for the government to bring us legislation which would cover what the government calls the private sector, which includes 90 per cent of the public sector in this province.

17:30

We also learned from leaked documents that the bill, for which we are supposed to hold our breath, is one which seems to have followed the strictures of the National Citizens' Coalition and other employment-interested groups calling for delay in the staging of coverage for not only the public sector but also the private sector. What we have learned by way of a leak in the past few days is that the working paper leading to legislation, which the government has had under consideration, is a proposal to have legislation which would not have effect before 1991 in terms of the tabling of equal pay plans with the government and would not have the benefits for the working women of this province before 1992.

It is with that serious prospect in mind, that there is going to be very limited effect even within a couple of years, as originally contemplated under Bill 105, for the narrowest group of women workers in this province, the public service of Ontario and a few related agencies, that we have sought these amendments.

Further, the minister has to understand that we are not only concerned here to see a broadening of this bill in the decision we have made on the chairman's ruling. The amendments we are making have to do more with the staging and timing of equal pay legislation than with scope. If this government is committed to bringing in legislation that is going to be effective for working women in this province in all sectors in which they work, it should have no objection to dealing with the proposals we have made by way of amendment. That includes the increase from one per cent to three per cent of payroll dedicated to achieving equal pay.

We are talking about a question of timing. We are all agreed the objective has to be reached. We want to reach it before 1992. We want to reach it in a way that is going to put money in the pockets of women in the foreseeable future, in the feelable future, in the real future, not a few years from now but in a future we can actually contemplate as legislators.

The ruling not only challenged our ability to discuss those matters by way of amendment to this bill, but also it suggested we had no right to question the government-established comparison groups for purposes of equal pay--in other words, the 60 per cent for female dominated jobs compared to the 70 per cent for male dominated jobs. That the ruling should go that far seems to me almost to suggest that we have no right to amend anything in the bill. I found it a quite extraordinarily broad ruling, and it is not on one element only that we objected to it. I hope the minister understands that.

We look forward to working in a very positive sense and, I hope, with the government's ultimate agreement, to make this legislation workable and to make it work for women in numbers that really can be called a first step at least, not 1.5 per cent of working women in Ontario but a significant portion.

Mr. Polsinelli: In the aftermath of this historic vote, as a member of this committee, Mr. Chairman, I must offer my apologies for the lack of



confidence the majority of this committee has had in your ruling and your interpretation of parliamentary practice and procedure.

I am reminded of my days on North York council, where we had established a procedural bylaw to determine our affairs and to ensure that fairness was brought forward in the decisions we made. Whenever an item came up that did not comply with the procedural rules we had established for ourselves, council in its wisdom usually set aside the procedural bylaw to deal with that element.

I am quite astounded at the vote this committee has taken. I am astounded that some members of this committee feel a government commitment of \$22 million a year towards the working women in the public service of this province, as we have defined it, is not sufficient. I am astounded that they feel an immediate \$66-million commitment is appropriate. I am astounded that their interpretation is that the difference between \$66 million and \$22 million per year is not an increase in government expenditure.

Mr. Chairman: Members of the committee, I ask for your indulgence for a moment. In terms of procedure from this point, since the amendments to section 2 placed by the official opposition and by the third party are essentially the same, with your agreement we can debate those amendments together and vote on them separately. That is one way of proceeding, to keep some order with respect to what is being suggested by the opposition parties.

If you are in disagreement with that, speak now or for ever hold your peace. Otherwise, I will move to Mr. Gillies of the official opposition on section 2 and then I will move to Ms. Gigantes, unless you want to deal with the amendments separately. However, I caution you that they are somewhat similar, although I realize there are some differences. You would have to sort them out in terms of the separate votes I intend to call on the proposed amendments of the opposition parties.

Ms. Gigantes: I would not like to say I oppose your suggestion, but I do not think I quite understand it. You are suggesting that we assume that both amendments are on the table at the same time.

Mr. Chairman: That we debate both amendments at the same time and vote on them separately since the amendments are essentially the same in thrust and character. There are some differences, which I appreciate, and you can outline them during the course of the debate. If you take a look at the refined motions, I think you will find that the essential thrust is the same on the part of both parties as to section 2.

Ms. Gigantes: Are you proposing that this will apply only to section 2?  
2?

Mr. Chairman: Yes. I will take others separately. I am trying to get some order into section 2 at this point. With that understanding, I will turn to Mr. Gillies. We will separate the vote. I want to be very clear on that. It is only for debating purposes that we will combine them.

Mr. Gillies: Mr. Chairman, I wonder whether you can offer me some direction.

Mr. Chairman: I would love to.

Mr. Gillies: As you know, my amendment to section 2 is very brief, but it relies on a schedule that would be appended to the bill as an

amendment. It makes sense to me, if the committee is in agreement, that my amendment and the schedule be dealt with at the same time.

Mr. Chairman: That makes sense, Mr. Gillies. If you are looking for direction from the chair, I suggest you debate section 2 and the incorporated package that would be appended to it for it to make total and full sense to the members of the committee.

Mr. Gillies: I ask the members of the committee to bear with me because the schedule is nine pages long. However, to move it, I guess I have to read it into the record.

Mr. McClellan: No, you do not.

Mr. Gillies: Do I not? If Mr. McClellan will get me out of that--

Mr. Chairman: We can accept it as taken.

Mr. Polsinelli: I think you should read it.

Mr. Chairman: Let us not exhaust Mr. Gillies at an early stage of this committee hearing. We can take the motion as read and the appended schedule as read. As long as the members of the committee have had an opportunity to read it and review it, we can assume it has been read into the record.

Mr. Polsinelli: On a point of order, Mr. Chairman: From the committees on which I have had the pleasure of serving, without trying to be obstructive, it is my understanding that as a procedural point the motion must be read into the record.

Mr. Chairman: No.

Mr. Polsinelli: That has been my experience.

Mr. Chairman: No, it does not have to be read into the record. If it is circulated to all members of the committee, it will be included in the minutes and in Hansard. It is before all members of the committee. As long as Mr. Gillies moves that the schedule be part of his main motion, it can be taken as read.

17:40

Mr. Polsinelli: Will it be included in Hansard?

Mr. Chairman: Yes. It is a fine point and a technicality but unless you want to challenge the chair again, I will so rule.

Mr. Polsinelli: Of course not. I respect your ruling, even the first one.

Mr. Chairman: I am getting a little shell-shocked at this point in the meeting.

Mr. Gillies: I am in the committee's hands. I understand the ruling of the chair is that I do not have to read the nine-page schedule into the record.



Mr. Chairman: Mr. Gillies moves that section 2 of the bill be struck out and the following substituted therefor:

"2. This act applies to all employers in the public sector, their employees, and the bargaining agents representing the employees."

Mr. Gillies: The schedule is appended to the back of the Progressive Conservative Party amendments, just so nobody has any doubt as to what the schedule is. It is on the page that commences "I move that the bill be amended by adding thereto the following schedule: 1. The public sector in Ontario consists of," etc. It finishes nine pages later with "Ministry of Treasury and Economics 1. Ontario Municipal Employees Retirement Board."

[See attached]

The purpose of the amendment is clear and it has been spoken to in principle a number of times during the course of the debate of the bill. It is the belief of our party that for pay equity in the public sector to be meaningful the benefits of pay equity should be felt throughout the public sector.

The definition we have adopted is precisely the same as the definition of all those public sector employees whose wages were restrained under the Inflation Restraint Act, 1983. The rationale is simply that we believe this makes the coverage of the bill far more meaningful. It increases the coverage many times over that contemplated by the government, and we believe that if the definition of the public sector was that which was considered appropriate during the days of restraint--

Mr. McClellan: By the Liberals, though.

Mr. Gillies: Yes, by the Liberals. That was our legislation that was supported by the Liberal Party. If the time has come for a benefit and a measure of equity for the women in the public sector to be put forward, it should be felt by all those sectors in the public sector that similarly felt the restraint.

I remind members of the committee that this increases the coverage by the bill from 1.5 per cent of the working women in the province to many times that. We believe this is one of the centrepieces of our amendment package, that it is right and that it should be done now, not at some time in the future on the whim of government, but while we have this legislation before us.

Ms. Gigantes: Mr. Chairman, I hope your formula for dealing with this section will admit of my placing as a friendly amendment to Mr. Gillies's amendment the following amendment. I will have to renumber my amendment as we have tabled it on behalf of the NDP, so I guess this would become an amendment to Mr. Gillies's amendment. Whatever the numbering is, I trust that will follow.

Mr. Chairman: Ms. Gigantes moves that the subamendment read as follows:

"2. This act applies to,

"(a) the crown in right of Ontario, every agency thereof and every authority, board, commission, corporation, office, or organization of persons a majority of whose directors, members or officers are appointed or chosen by

or under the authority of the Lieutenant Governor in Council or a member of the executive council;

"(b) the corporation of every municipality in Ontario, every local board as defined by the Municipal Affairs Act, and every authority, board, commission, corporation, office, or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario;

"(c) every board as defined in the Education Act;

"(d) every college, university or post-secondary school educational institution in Ontario the majority of the capital or annual operating funds of which are received from the crown;

"(e) every hospital listed in the schedule to regulation 863 of Revised Regulations of Ontario, 1980, made under the Public Hospitals Act, every private hospital operated under the authority of a licence issued under the Private Hospitals Act, every hospital established or approved by the Lieutenant Governor in Council as a community psychiatric hospital under the Community Psychiatric Hospitals Act and every sanitarium licensed by the Lieutenant Governor in Council under the Private Sanitaria Act;

"(f) every corporation with share capital, 90 per cent of the issued shares of which are beneficially held by or for an employer or employers described in clauses (a) to (e), and every wholly owned subsidiary thereof;

"(g) every corporation without share capital, the majority of whose members or officers are members of, or are appointed or chosen by or under the authority of, an employer or employers described in clauses (a) to (e), and every wholly owned subsidiary thereof;

"(h) every board of health under the Health Promotion and Protection Act, 1983, and every board of health under an act of the Legislature that establishes or continues a regional municipality;

"(i) the Office of the Lieutenant Governor of Ontario, the Office of the Assembly, members of the Assembly, the Office of the Ombudsman and the Provincial Auditor; and

"(j) any authority, board, commission, corporation, office, person or organization of persons, or any class of authorities, boards, commissions, corporations, offices, persons or organizations of persons, set out in the schedule hereto or added to the schedule by the regulations made under this act."

Ms. Gigantes: Mr. Gillies will probably find this a very friendly amendment. The schedule to which I have referred in this amendment, clause (j), is the same schedule that is attached to Mr. Gillies's amendment. The one addition you will find in the approach we have used is in clause (j), which makes room for the addition to the schedule by future regulations.

Mr. Gillies: As Ms. Gigantes has pointed out, the amendment is substantively the same as ours. It has slightly different wording, a different way of getting at the same thing, and we would certainly be happy to accept it as a friendly amendment.

Quite rightly, I believe, the government should have power by regulation to amend the schedule, because circumstances, the names of institutions and so



on, change. The added feature of Ms. Gigantes's amendment could save difficulties in the future and save the necessity of future amendments to the act on minor technical grounds. Thus, we are quite happy to co-operate in that respect.

Ms. Gigantes: Having had Mr. Gillies accept our amendment as a suitable subamendment of his amendment, I would like to speak briefly to the purposes of our amendment.

As we have noted before, Bill 105, as it has been set before us, addresses the needs for equal pay for work of equal value of about 1.5 per cent of the two million women who work in Ontario.

We as a party were surprised and taken aback in July 1985. Although the government had a few short weeks beforehand signed an agreement with the NDP saying that in the first session of the Legislature we would have legislation tabled providing equal pay for work of equal value in both the public and the private sectors in Ontario, a few short weeks later, in July, the government said it was going to split its legislative approach to the question of equal pay.

Seeing that the government had taken advantage of the fact that the public sector and the private sector had been identified in the accord, perhaps in the accord we should have insisted on the tabling of legislation in the first session that dealt with all working women, all women who work for pay in Ontario. Perhaps then the idea would not have occurred to the government to have two separate bills, but we were taken aback by the government's announcement in July 1985 that it intended to proceed with two separate bills.

17:50

Furthermore, we were dismayed by the government's announcement that for the purposes of this double-barrelled approach--if one can call it that, because they are not barrels that are firing at the same time--the government was going to redefine what the public sector in Ontario is. We all understand what the public sector in Ontario is, and if we had not understood it before 1982 and 1983, we certainly understood it in cold, hard cash terms then.

That was when hundreds of thousands of women who work in what we call in common parlance "the public sector" had in legislative terms a recognition of the fact that they work in the public sector by way of a government bill that was brought forward by the Conservatives and supported by the Liberals and that provided wage restraint for those hundreds of thousands of women who work in the public sector of Ontario.

Not only did we have a two-part approach by the government, and one which was discouraging, but also we had an absolutely dismaying redefinition or attempt to redefine what the public sector is. If the government had said in July 1985 that in its first year and a half of government it was going to bring in legislation which in a very complex manner would establish pay equity, however that was defined in the bill, for 24,000 women and provide some benefits under that legislation addressed to pay equity for 24,000 women in Ontario, I think it would have been laughed to shame.

There has been a very slow dawning of an understanding in this province that the government's so-called agenda for equal pay for work of equal value is not only measured and carefully thought out and aimed at being done correctly, as we have heard time after time from the government, but also almost misses the mark. We have two million women working in Ontario, and for

a year and a half they have been promised legislation that is going to benefit that group of two million women whose work has been systematically undervalued, and those men who have been associated in work groups with them. When the government says it is going to bring forward legislation that will affect one and a half per cent of these women, and it is going to take 18 months to get to it, that effort seems to have missed the mark in large measure.

What was the identified commitment, the commitment that was understood by at least two parties and the commitment that had been supported by a third party, at least as far as the public sector goes? The public of Ontario has come to understand slowly that what has happened in Ontario is legislation that has not met that commitment. That is all we have to show after a year and a half.

When we compare Bill 105 in its current state with the Bill 105, I hope well amended, we will be dealing with if Mr. Gillies's amendment passes and if this subamendment, which simply clarifies Mr. Gillies's intent, passes, we will be dealing with legislation to cover a sector in which 600,000 people work, and we can guess that about 300,000 of them are women. Some of the women are in work groups where their work has been systematically undervalued, and the minister knows what kind of work we are talking about. We are talking about women's work, some of it done in Ontario by men. Those approximately 300,000 women are not going to get anything from Bill 105. We could expect that if the same ratio of benefit from legislation were to apply to the full public sector as the government has estimated would apply to the public service under Bill 105, perhaps 240,000 of the 300,000 women, give or take a few, who work in the full public sector in Ontario would actually receive benefits under legislation, that is, equal pay for work of equal value.

We are talking here about a very important step; that is, to recognize that the process of providing equal pay for work of equal value in Ontario is a serious process. For the life of me, I find it difficult for the government to say to us on the one hand: "Trust us. We are going to bring in legislation that covers the other 98.5 per cent of women, and we are going to bring it in in a matter of weeks." On the other, they say: "But you cannot do that, not now, it is irresponsible. You are rushing our fiscal responsibility down the road to ruin."

Does the government mean to bring in legislation that is going to be effective and provide benefits for women? Does it mean to bring in that legislation soon? If it does, then what is the hesitation about seeing the legislation broadened to cover the full public sector, which is what the government has said this legislation is addressed to? In spite of the fact it has redefined the public sector, it is called this. In fact, the minister, speaking on second reading on Bill 105, referred to it consistently, time after time, as you remember, as the public sector equal pay legislation. You read the title as if it said an act to provide pay equity for employees in predominantly female groups of jobs in the public sector. If you look in Hansard, it is there. He said it time after time.

I think that is what the minister would like to do. If he wants to do it and is committed to doing it soon anyhow, why not do it now? I hope that understanding on our part will help the minister understand why we are committed to the amendment put forward at this point. I hope that in his consideration, which he has suggested he will undertake, of all amendments which come out of this committee work, he will look at the matter and say: "Good. The legislation is going to come from us in any case. We are going to be providing benefits for women who work in the full public sector in Ontario. We might as well do it now. We have waited long enough."



Mr. Chairman: Since Mr. Gillies has in fact accepted your amendment to his amendment as being friendly and sympathetic, I would entertain your schedule as the amendment to the amendment at this time, if you would like that read into the record or taken as read. You have a schedule.

Ms. Gigantes: It is the same schedule as that put forward by Mr. Gillies, so I did not see any need to refer to it in placing my motion. Perhaps Mr. Revell has some (inaudible).

Mr. Revell: The difference between the two schedules, as I read the motions, is that Mr. Gillies does a couple of things differently. It is a very short statement of what he wants to bring in, and it clearly applies to three elements: the employer; the employee; and the bargaining agents. Ms. Gigantes's motion, which I think will have exactly the same effect in law, does not make any reference to the employee or the bargaining agents, but the rest of the bill brings those elements into place by implication. I think that legally the two motions have the same effect.

Ms. Gigantes has taken the approach, which was taken in the 1983 legislation, of having a long statement of the principal actors in the broader public sector, followed by a schedule of smaller boards and agencies which clarifies and sometimes extends beyond what some people may consider to be truly in the public sector. The difference in approach is minimal.

Mr. Gillies has exactly the same thing. His schedule consists of two parts, the main body of the schedule, which deals with the same list as set out in clauses (a) to (j) of Ms. Gigantes's motion, and an appendix, which contains the same list of boards, agencies and commissions as Ms. Gigantes's motion. I submit to the chairman and to Ms. Gigantes that to get to the same place, her amendment to section 2 should also include her schedule as part of the friendly amendment.

Mr. Chairman: If you are in agreement with that, perhaps you would like to proceed as I suggested. Otherwise, I will go back to Mr. Gillies in connection with his schedule as read.

Ms. Gigantes moves that her amendment be read to include the schedule attached at the end of our amendment package. It begins, "I move that the bill be amended by adding thereto the following schedule." It is titled "Schedule" and begins with "Ministry of Agriculture and Food."

[See attached]

Mr. Chairman: If there is no further debate on this matter, I will take the amendment--

Mr. Polsinelli: I am sure there will be further debate, but I draw your attention to the hour, Mr. Chairman. The bells have rung, the House has adjourned and I submit our time for sitting has expired.

Mr. Chairman: It has been drawn to our attention that our time has expired and that the adjournment bells have rung. I too heard them. That being the case, we will adjourn until tomorrow. Immediately following routine proceedings we will again meet in this same location.

The committee adjourned at 6:02 p.m.

BILL 105

An Act to provide  
Pay Equity for Employees  
in Predominantly Female  
Groups of Jobs in the Public Service

MOTION TO BE MOVED IN COMMITTEE

M. Gillies

Schedule

I MOVE that the Bill be amended by adding thereto  
the following Schedule:

SCHEDULE

1. The public sector in Ontario consists of,

(a) the Crown in right of Ontario, every  
agency thereof, and every authority,  
board, commission, corporation, office  
or organization of persons a majority of  
whose directors, members or officers are  
appointed or chosen by or under the  
authority of the Lieutenant Governor in  
Council or a member of the Executive  
Council;

(b) the corporation of every municipality in  
Ontario, every local board as defined by  
the Municipal Affairs Act, and every  
authority, board, commission,  
corporation, office or organization of  
persons whose members or officers are  
appointed or chosen by or under the  
authority of the council of the  
corporation of a municipality in  
Ontario;

(c) every board as defined in the Education  
Act, and every college, university or  
post-secondary school educational

R.S.O. 1980,  
c.303

R.S.O. 1980,  
c.129



institution in Ontario the majority of the capital or annual operating funds of which are received from the Crown;

(d) every hospital listed in the Schedule to Regulation 863 of Revised Regulations of Ontario, 1980 made under the Public Hospitals Act, every private hospital operated under the authority of a licence issued under the Private Hospitals Act, every hospital established or approved by the Lieutenant Governor in Council as a community psychiatric hospital under the Community Psychiatric Hospitals Act and every sanitarium licensed by the Lieutenant Governor in Council under the Private Sanitaria Act;

(e) every corporation with share capital, 90 per cent of the issued shares of which are beneficially held by or for an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;

(f) every corporation without share capital, the majority of whose members or officers are members of, or are appointed or chosen by or under the authority of, an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;

(g) every board of health under the Health Promotion and Protection Act, 1983, and every board of health under an Act of the Legislature that establishes or continues a regional municipality;

(h) the Office of the Lieutenant Governor of Ontario, the Office of the Assembly, members of the Assembly, the Office of the Ombudsman and the Provincial Auditor; and

(i) any authority, board, commission, corporation, office, person or organization of persons, or any class of authorities, boards, commission, corporations, offices, persons or organizations of persons, set out in the Appendix to this Schedule or added to the Appendix by the regulations made under this Act.

R.S.O. 1980,  
cc. 410, 389,  
79, 391

1983, c. 10

## APPENDIX

### MINISTRY OF AGRICULTURE AND FOOD

1. Ontario Dairy Herd Improvement Corporation

### MINISTRY OF CITIZENSHIP AND CULTURE

1. The Art Gallery of Ontario
2. CJRT-FM Inc.
3. Royal Botanical Gardens

### MINISTRY OF COLLEGES AND UNIVERSITIES

1. College Dominican de Philosophie
2. Knox College
3. McMaster Divinity College
4. Queen's Theological College
5. Regis College
6. St. Augustine's Seminary
7. St. Michael's College
8. St. Paul University
9. St. Paul's United College
10. St. Peter's Seminary
11. Trinity College
12. Victoria College
13. Waterloo Lutheran Seminary
14. Wycliffe College



# MINISTRY OF COMMUNITY AND SOCIAL SERVICES

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) children's residences operating under the Child and Family Services Act, 1984 (c.55);
- (b) homes for the aged operating under the Homes for the Aged and Rest Homes Act (R.S.O.1980,c.203);
- (c) counselling services, special assistance and staff training services purchased by municipalities under the General Welfare Assistance Act (R.S.O.1980,c.188);
- (d) counselling services purchased by the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O.1980,c.273);
- (e) hostels providing services purchased by municipalities under the General Welfare Assistance Act (R.S.O.1980,c.188);
- (f) work activity projects under the General Welfare Assistance Act (R.S.O.1980,c.188), c.188) purchased by municipalities or the Ministry of Community and Social Services;
- (g) support services to the physically handicapped purchased by the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O.1980,c.273);
- (h) vocational rehabilitation services funded by the Ministry of Community and Social Services under the Vocational Rehabilitation Services Act (R.S.O.1980,c.525);
- (i) satellite homes operating or funded under the Homes for the Aged and Rest Homes Act (R.S.O.1980,c.203);
- (j) nursing services purchased or funded under the Homemakers and Nurses Services Act (R.S.O.1980,c.200);

- (k) workshops under the Vocational Rehabilitation Services Act (R.S.O.1980,c.525);
- (l) services funded under the Development Services Act (R.S.O.1980,c.118);
- (m) homes for retarded persons approved under the Homes for Retarded Persons Act (R.S.O.1980,c.201);
- (n) day nurseries operated by corporations or municipalities under the Day Nurseries Act (R.S.O.1980,c.111) receiving direct subsidies from the Ministry of Community and Social Services;
- (o) day nurseries and private home day-care agencies providing services and funded under agreements with municipalities under the Day Nurseries Act (R.S.O.1980,c.111);
- (p) credit counselling services receiving financial assistance under agreements with the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O.1980,c.273);
- (q) probation and after-care services, residential services and supervisory services to children on probation under agreement with the Ministry of Community and Social Services under the Children's Probation Act (R.S.O.1980,c.70) or under the Ministry of Community and Social Services Act (R.S.O.1980,c.273).

2. Societies within the meaning of the Child and Family Services Act, 1984 (c.55) and agencies from whom such societies purchase child care services.

3. Corporations operating charitable institutions approved under the Charitable Institutions Act (R.S.O.1980,c.64).

4. Boards of management operating under the Homes for the Aged and Rest Homes Act (R.S.O.1980,c.203).

5. District Welfare Administration Boards operating under the District Welfare Administration Boards Act (R.S.O.1980,c.122).



## MINISTRY OF CORRECTIONAL SERVICES

1. Any agency, board, commission, person or partnership that provides, under funding by the Ministry of Correctional Services,

- (a) assistance to witnesses and victims of crime or other disabled groups;
- (b) educational, employment search, medical or promotional services;
- (c) supervision of inmates, parolees, probationers or persons accused of crime;
- (d) community residential services.

## MINISTRY OF EDUCATION

1. Centre franco-ontarien de ressources pédagogiques.

## MINISTRY OF HEALTH

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) an ambulance service, under the authority of a licence issued under the Ambulance Act (R.S.O.1980,c.20);
- (b) a nursing home, under the authority of a licence issued under the Nursing Homes Act (R.S.O.1980,c.320);
- (c) a laboratory or a specimen collection centre, under the authority of a licence issued under the Laboratory and Specimen Collection Centre Licensing Act (R.S.O.1980,c.409);
- (d) a psychiatric facility within the meaning of the Mental Health Act (R.S.O.1980,c.262), the operation of which is funded in whole or in part by the Minister of Health;
- (e) a home for special care established, approved or licensed under the Homes for Special Care Act (R.S.O.1980.c.202):

- (f) a home care facility within the meaning of Regulation 452 of Revised Regulations of Ontario, 1980 made under the Health Insurance Act (R.S.O.1980,c.197) or which, by arrangement with any such home care facility,
    - (i) supplies nursing, physiotherapy, occupational therapy or speech therapy services that are insured home care services under section 44 of Regulation 452 of Revised Regulations of Ontario, 1980 made under the Health Insurance Act (R.S.O.1980,c.197), and
    - (ii) is entitled to payment from the home care facility for or in respect of supplying such services;
  - (g) a rehabilitation centre or a crippled children's centre listed in Schedule 10 to Regulation 452 of Revised Regulations of Ontario, 1980 made under the Health Insurance Act (R.S.O.1980,c.197);
  - (h) a detoxification centre the operation of which is funded in whole or in part by the Minister of Health;
  - (i) an adult community mental health service the operation of which is, pursuant to an agreement in writing, funded in whole or in part by the Minister of Health;
  - (j) a placement service the operation of which is, pursuant to a "Placement Co-ordination Service Agreement" or other agreement in writing, funded in whole or in part by the Minister of Health.
2. A district health council appointed under the Ministry of Health Act (R.S.O.1980,c.280).
  3. A laundry that is operated exclusively for one or more than one hospital.
  4. Ottawa-Carleton Regional Hospital Food Services, Inc.
  5. Toronto District Heating Corporation.
  6. The Alcoholism and Drug Addiction Research



7. The operations in Ontario of the Canadian Red Cross Society, other than the provision by the society of home support services for the elderly and homemaking services.

8. The Hospital Council of Metropolitan Toronto

9. The Hospital Medical Records Institute

10. The Ontario Cancer Institute

11. The Ontario Cancer Treatment and Research Foundation

12. The Ontario Mental Health Foundation

13. The Ontario Council of Health

14. The Toronto Institute of Medical Technology

#### MINISTRY OF INDUSTRY AND TRADE

1. Metropolitan Toronto Convention Centre

#### MINISTRY OF MUNICIPAL AFFAIRS

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

(a) the collection, removal and disposal of garbage and other refuse for a municipality;

(b) the operation and maintenance of buses, for the conveyance of passengers under an agreement with a municipality.

#### MINISTRY OF NATURAL RESOURCES

1. Conservation Authorities established under the Conservation Authorities Act (R.S.O.1980,c.85).

#### MINISTRY OF TOURISM AND RECREATION

1. St. Clair Parkway Commission

**MINISTRY OF TREASURY AND ECONOMICS**

1. Ontario Municipal Employees Retirement Board



N.D.P.

BILL 105

An Act to provide  
Pay Equity for Employees  
in Predominantly Female  
Groups of Jobs in the Public Service

MOTION TO BE MOVED IN COMMITTEE

Ms. Gignac.

Schedule

I MOVE that the Bill be amended by adding thereto  
the following Schedule:

SCHEDULE

MINISTRY OF AGRICULTURE AND FOOD

1. Ontario Dairy Herd Improvement Corporation

MINISTRY OF CITIZENSHIP AND CULTURE

1. The Art Gallery of Ontario
2. CJRT-FM Inc.
3. Royal Botanical Gardens

MINISTRY OF COLLEGES AND UNIVERSITIES

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3. McMaster Divinity College
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5. Regis College
6. St. Augustine's Seminary
7. St. Michael's College
8. St. Paul University
9. St. Paul's United College
10. St. Peter's Seminary
11. Trinity College
12. Victoria College
13. Waterloo Lutheran Seminary
14. Wycliffe College

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- (b) homes for the aged operating under the Homes for the Aged and Rest Homes Act (R.S.O.1980,c.203);
- (c) counselling services, special assistance and staff training services purchased by municipalities under the General Welfare Assistance Act (R.S.O.1980,c.188);
- (d) counselling services purchased by the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O.1980, c.273);
- (e) hostels providing services purchased by municipalities under the General Welfare Assistance Act (R.S.O.1980,c.188);



- (f) work activity projects under the General Welfare Assistance Act (R.S.O.1980, c.188) purchased by municipalities or the Ministry of Community and Social Services;
- (g) support services to the physically handicapped purchased by the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O.1980,c.273);
- (h) vocational rehabilitation services funded by the Ministry of Community and Social Services under the Vocational Rehabilitation Services Act (R.S.O.1980,c.525);
- (i) satellite homes operating or funded under the Homes for the Aged and Rest Homes Act (R.S.O.1980,c.203);
- (j) nursing services purchased or funded under the Homemakers and Nurses Services Act (R.S.O.1980,c.200);
- (k) workshops under the Vocational Rehabilitation Services Act (R.S.O.1980,c.525);
- (l) services funded under the Development Services Act (R.S.O.1980,c.118);
- (m) homes for retarded persons approved under the Homes for Retarded Persons Act (R.S.O.1980,c.201);
- (n) day nurseries operated by corporations or municipalities under the Day Nurseries Act (R.S.O.1980,c.111) receiving direct subsidies from the Ministry of Community and Social Services;
- (o) day nurseries and private home day-care agencies providing services and funded under agreements with municipalities under the Day Nurseries Act (R.S.O.1980,c.111);
- (p) credit counselling services receiving financial assistance under agreements with the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O.1980,c.273);

- \* (q) probation and after-care services, residential services and supervisory services to children on probation under agreement with the Ministry of Community and Social Services under the Children's Probation Act (R.S.O.1980,c.70) or under the Ministry of Community and Social Services Act (R.S.O.1980,c.273).
- 2. Societies within the meaning of the Child and Family Services Act, 1984 (c.55) and agencies from whom such societies purchase child care services.
- 3. Corporations operating charitable institutions approved under the Charitable Institutions Act (R.S.O.1980,c.64).
- 4. Boards of management operating under the Homes for the Aged and Rest Homes Act (R.S.O.1980,c.203).
- 5. District Welfare Administration Boards operating under the District Welfare Administration Boards Act (R.S.O.1980,c.122).

#### MINISTRY OF CORRECTIONAL SERVICES

- 1. Any agency, board, commission, person or partnership that provides, under funding by the Ministry of Correctional Services,
  - (a) assistance to witnesses and victims of crime or other disabled groups;
  - (b) educational, employment search, medical or promotional services;
  - (c) supervision of inmates, parolees, probationers or persons accused of crime;
  - (d) community residential services.

#### MINISTRY OF EDUCATION

- 1. Centre franco-ontarien de ressources pédagogiques.



## MINISTRY OF HEALTH

1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

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- (b) a nursing home, under the authority of a licence issued under the Nursing Homes Act (R.S.O.1980,c.320);
- (c) a laboratory or a specimen collection centre, under the authority of a licence issued under the Laboratory and Specimen Collection Centre Licensing Act (R.S.O.1980,c.409);
- (d) a psychiatric facility within the meaning of the Mental Health Act (R.S.O.1980,c.262), the operation of which is funded in whole or in part by the Minister of Health;
- (e) a home for special care established, approved or licensed under the Homes for Special Care Act (R.S.O.1980,c.202);
- (f) a home care facility within the meaning of Regulation 452 of Revised Regulations of Ontario, 1980 made under the Health Insurance Act (R.S.O.1980,c.197) or which, by arrangement with any such home care facility,
  - (i) supplies nursing, physiotherapy, occupational therapy or speech therapy services that are insured home care services under section 44 of Regulation 452 of Revised Regulations of Ontario, 1980 made under the Health Insurance Act (R.S.O.1980,c.197), and
  - (ii) is entitled to payment from the home care facility for or in respect of supplying such services;
- (g) a rehabilitation centre or a crippled children's centre listed in Schedule 10 to Regulation 452 of Revised Regulations

of Ontario, 1980 made under the Health Insurance Act (R.S.O.1980,c.197);

- (h) a detoxification centre the operation of which is funded in whole or in part by the Minister of Health;
- (i) an adult community mental health service the operation of which is, pursuant to an agreement in writing, funded in whole or in part by the Minister of Health;
- (j) a placement service the operation of which is, pursuant to a "Placement Co-ordination Service Agreement" or other agreement in writing, funded in whole or in part by the Minister of Health.

2. A district health council appointed under the Ministry of Health Act (R.S.O.1980,c.280).

3. A laundry that is operated exclusively for one or more than one hospital.

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5. Toronto District Heating Corporation.

6. The Alcoholism and Drug Addiction Research Foundation

7. The operations in Ontario of the Canadian Red Cross Society, other than the provision by the society of home support services for the elderly and homemaking services.

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9. The Hospital Medical Records Institute

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11. The Ontario Cancer Treatment and Research Foundation

12. The Ontario Mental Health Foundation

13. The Ontario Council of Health

14. The Toronto Institute of Medical Technology



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1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

- (a) the collection, removal and disposal of garbage and other refuse for a municipality;
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## MINISTRY OF TOURISM AND RECREATION

1. St. Clair Parkway Commission

## MINISTRY OF TREASURY AND ECONOMICS

1. Ontario Municipal Employees Retirement Board

N. D. P.

BILL 105

An Act to provide  
Pay Equity for Employees  
in Predominantly Female  
Groups of Jobs in the Public Service

MOTION TO BE MOVED IN COMMITTEE



## Section 31

I MOVE that section 31 of the Bill be struck out  
and the following substituted therefor:

Short title

31. The short title of this Act is the Public Sector Equal Pay Act, 1986.



A20N  
XC14  
-578

J-33

~~THAT~~

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

TUESDAY, OCTOBER 28, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Callahan, R. V. (Brampton L)

Charlton, B. A. (Hamilton Mountain NDP)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Rowe, W. E. (Simcoe Centre PC)

Substitutions:

Davis, W. C. (Scarborough Centre PC) for Mr. Partington

Gillies, P. A. (Brantford PC) for Mr. O'Connor

Also taking part:

Johnston, R. F. (Scarborough West NDP)

Clerk: Mellor, L.

Staff:

Revell, D. L., Legislative Counsel

Ward, B., Research Officer, Legislative Research Service

Witness:

From the Ministry of Labour:

Wrye, Hon. W. M., Minister of Labour (Windsor-Sandwich L)



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, October 28, 1986

The committee met at 3:49 p.m. in room 151.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Mr. Chairman: Members of the committee, I will call you to order so we can get on with our business.

As we were proceeding yesterday, following the rather historic debate we had in connection with the admissibility of amendments, we were dealing with amendments relative to section 2, and we had very nearly reached the point of voting on those amendments.

If there are any final comments on section 2, I will entertain those now, and I will go to Mr. Callahan; but immediately following the remaining comments on that section, I will go to a vote on that section of the bill.

Mr. Callahan: First, have we had prepared for us a marriage--if that is the word--of the two amendments to section 2, so both I and the other members of the committee can look at them and judge what they say? It would be difficult to vote one way or the other without knowing that.

Mr. Chairman: Perhaps I could have Ms. Gigantes speak to that, but because the amendment to the amendment proposed by the New Democratic Party was friendly to the Progressive Conservative main amendment, it was agreed that Ms. Gigantes would place that amendment and that it would be incorporated within the context of the official opposition's main amendment. I believe that is the way it would fit.

Mr. Callahan: I recall that to be accurate, but my recollection was that the Conservative amendment to section 2 had some nine pages of schedules attached, and the NDP's had a full page with, I think, four or five, and I think they did not necessarily contain the exact specific names in the schedule.

What I am asking for--and I thought this might have been done--is either an integration of the two documents, if I can call it that, or the alternative. I would suggest that before one could debate or even vote on section 2, with the friendly amendment, we would have to have it read out so we would know what we are voting on.

Mr. Chairman: I believe that matter was discussed by legislative counsel yesterday. However, I am going to go to Mr. Charlton, who perhaps can shed some light on this issue.

Mr. Charlton: My recollection of the way in which Mr. Gillies accepted our amendment as a friendly amendment is he said that if we could accept the words in their opening statement dealing with employers and employees and bargaining agents, he could accept the format in which our essentially identical lists were presented in our amendment.

What that means to me is that the Tory amendment to section 2, which starts out, "This act applies to all employers in the public sector, their

employees and bargaining agents representing the employees," would be added in front of the amendment moved by Ms. Gigantes.

Mr. Polsinelli: While I definitely understand what the purpose of the amendments were, I am having a little bit of difficulty understanding how to read the amendments. Am I to take it, for example, that Mr. Gillies's schedule is no longer part of his amendment?

Mr. Chairman: That is correct.

Mr. Gillies: No. It is not.

Mr. Chairman: I understood one was replacing the other.

Mr. Gillies: If I may, I will try to clear this up; and Ms. Gigantes can correct me if her understanding is different. We would like the wording--I refer Mr. Callahan and other members to the three-line substantive amendment I moved--

Mr. Callahan: Plus the nine pages of schedules.

Mr. Gillies: Yes. If you check Ms. Gigantes's amendment, you will find that the two pages, starting with "The crown in right of Ontario" and down to "any authority, board," etc., actually constitute the first couple of pages of my schedule.

Ms. Gigantes: That is correct.

Mr. Gillies: In other words, it is there, in either amendment. As long as my three lines starting with "This act" are put in front of the NDP amendment, along with the NDP schedule, we have virtually the identical amendment.

Mr. Polsinelli: Do we not have the situation then where the amendment would read so that certain agencies would be covered twice?

Ms. Gigantes: No.

Mr. Gillies: No.

Mr. Polsinelli: You have just indicated, Mr. Gillies, that the first two pages of Ms. Gigantes's amendments are virtually covered in the first page of your amendment.

Mr. Charlton: What he just said was that he would accept his three lines and our amendment.

Mr. Polsinelli: But if it is his first three lines, then your amendment and your schedule--

Mr. Charlton: No, no. Our amendment, which includes our schedule--

Mr. Gillies: No, no. What I said was that my three lines plus the NDP amendment and the NDP schedule give you exactly the same as if you took my substantive amendment plus my schedule.

Mr. Polsinelli: So your schedule is no longer part of your amendment.



Mr. Gillies: It is the same as the NDP's, but just for the sake of clarity--

Mr. Polsinelli: Mr. Chairman, we should have either one or the other.

Mr. Charlton: And he has just given you one.

Mr. Polsinelli: But which one have you taken?

Mr. Charlton: He said his three lines plus our amendment.

Mr. Polsinelli: But he is also indicating--

Mr. Charlton: No. He said his three lines plus our amendment.

Mr. Gillies: My three lines plus the NDP amendment plus the NDP schedule are the same as my three lines plus my schedule.

Interjection: It sounds like, "Who's on first?"

Mr. Polsinelli: So what we have left is your first three lines, the NDP amendment and the NDP schedule, without your schedule.

Mr. Gillies: Yes.

Ms. Gigantes: That is right.

Mr. Polsinelli: So your schedule is no longer part of the amendment.

Ms. Gigantes: That is correct.

Mr. Chairman: As you will recall, a moment ago I said the NDP schedule in fact replaced Mr. Gillies's schedule.

Mr. Polsinelli: Why do we not just call it the NDP amendment then? It is substantially an NDP amendment.

Mr. Chairman: No, it is not. It was moved by Mr. Gillies, and an amendment to the amendment was placed by Ms. Gigantes. I am going to ask legislative counsel to make a comment on this to make sure there is no confusion about the interpretation of what we are voting for and to clarify specifically for Mr. Callahan and others who may have some question about what we are doing.

Mr. Polsinelli: Prior to hearing from legislative counsel, it would be helpful, at least to myself, if we could have both amendments integrated and have one amendment to deal with. I find this a bit complex. We are dealing with two amendments, each of them more than 10 pages in length, trying to be integrated; and while I may purport to understand what is happening, I would rather see it in black and white before me.

Ms. Gigantes: It is in black and white. We can put pages together, side by side.

Mr. Chairman: We have a number of speakers. Mr. Polsinelli, I know you are finding it difficult to control yourself, and I am trying to get some order in the committee. I am going to turn now to legislative counsel to give the committee some guidance and assistance on this matter, since I know he can clear this up in your minds in a very succinct fashion.

Mr. Revell: I am bit confused myself. I was under the impression that Mr. Gillies's motion was the the following: "I move that section 2 of the bill be struck out and the following substituted therefor," etc. I thought Ms. Gigantes had then moved, "I move that everything after the word 'therefor' be struck out and the following substituted therefor."

I gather I have made an erroneous interpretation there and what was intended was something such as this: Mr. Gillies's motion reads, "I move that section 2 of the bill be struck out and the following substituted therefor:

"'2. This act applies to all employees in the public sector, their employees and the bargaining agents representing the employees and, for greater certainty, applies to: (a) the crown in right of Ontario, every agency thereof" down through clause 2(j) and then the schedule, which will eventually be incorporated at the end of the bill and which is set out towards the end of the NDP package of motions.

That motion, which I guess is incorporated as part of this motion, starts, "I move that the bill be amended by adding thereto the following schedule," which is entitled "Schedule" and begins with "Ministry of Agriculture and Food." Then the seven pages go through numerous ministries ministry by ministry, plus it has a number of boards, agencies and commissions.

Mr. Davis: You have it. That is right.

Mr. Polsinelli: Is the schedule contained as one of the clauses from (a) to (j) in Ms. Gigantes's amendment?

Mr. Revell: The schedule is referred to in clause (j) of Ms. Gigantes's motion, which says, "any authority, board, commission, corporation...set out in the schedule hereto or added to the schedule by the regulations made under this act."

Mr. Gillies: You find the NDP schedule at the back of the NDP amendment.

Mr. Polsinelli: So we can throw yours out?

Mr. Chairman: Can I move to Ms. Hart now, so I can get back to some order? Then I will go to Ms. Gigantes, who I have next on the list, if she still wants to--

Ms. Gigantes: No.

Mr. Chairman: You are coming off the list? Then I will go to Mr. Callahan and Mr. Cooke.

Ms. Hart: I am completely surprised that we do not have a copy of it in front of us. We are talking about expanding this bill incredibly. How are we going to be able to consider it in an ordered fashion if it is not in front of us exactly as it has been moved? I personally am going to have a lot of difficulty.

Ms. Gigantes: It is not normal that amendments and subamendments be put together.

Ms. Hart: It is not normal that they be this long either.



Mr. Chairman: It is the committee's decision. I believe it was explained how it would be handled, but we will carry on and hear the balance of the committee's comments. I will go to Mr. Callahan now.

Mr. Callahan: Let me give an example. If I understand legislative counsel correctly, he is equating clause 2(c) in the schedule of the Progressive Conservative amendment to clauses 2(c) and (d) in the NDP amendment. Let me just read that. If you follow it, I think you will see what I mean.

It states, "every board as defined in the Education Act, and every college, university or post-secondary school educational institution in Ontario the majority of the capital or annual operating funds of which are received from the crown." In the NDP amendment, if I put it together, it reads, "every board as defined in the Education Act; ...every college, university or post-secondary school educational institution in Ontario"--oh, I am sorry; it is there.

16:00

Ms. Gigantes: Sure it is.

Mr. Callahan: It does continue, "the majority of the capital or annual operating funds of which are received from the crown."

Let me follow that through now; "every hospital"--that is the same. Were they put together? They must have been.

Ms. Gigantes: Yes. We explained--

Mr. Callahan: Just a second. I am not finished. Do I gather they are exactly the same right down to clause (j)?

Ms. Gigantes: Right down to "Ministry of Agriculture and Food."

Mr. D. S. Cooke: We just split clauses (c) and (d). That is the difference between the two.

Mr. Callahan: What you are saying then is that you want to take the Tory five lines and add to it the schedule of the Tories.

Mr. Chairman: No.

Mr. Callahan: The NDP's?

Mr. Chairman: That is right.

Mr. Callahan: That is the nature of what we are voting on?

Mr. Chairman: To satisfy the question raised by Ms. Hart on the need to have the combined amendment in front of you, I have asked the clerk of the committee to go out and do it in just that fashion, which is simply to tuck the two together, and it will be placed before you momentarily; so you will have not only the original body of the amendment proposed by Mr. Gillies but also the schedule proposed by Ms. Gigantes. Those two will be put together, and you will have the package in front of you shortly.

Mr. D. R. Cooke: I was not here yesterday. I was going to ask to have the draftsman reread the motion as he understands it now, but I guess that is going to happen shortly.

Mr. Revell: If you like, I will go through it one more time.

Mr. D. R. Cooke: Without going through all the--

Mr. Revell: I will not read the whole thing. It essentially is a package of about 10 pages that you have now.

The first page you will need is the PC motion, which starts, "Section 2." It was moved yesterday by Mr. Gillies and reads: "I move that section 2 of the bill be struck out and the following substituted therefor: 'This act applies to all employers in the public sector, their employees and the bargaining agents representing the employees.'"

Then Ms. Gigantes's motion, which was friendly, would change the motion to read as follows: "This act applies to all employers in the public sector, their employees and the bargaining representing the employees and, for greater certainty, applies to," etc.

Then we turn to the first part of the NDP motion, which starts off with, "I move that section 2 of the bill be struck out and the following substituted therefor: '2. This act applies to'"--all that can be crossed out. We start with "(a) the crown in right of Ontario...(b) the corporation of every municipality" and go through to clause 2(j), which ends with "set out in the schedule hereto or added to the schedule by the regulations made under this act."

I do not know the procedural method for the schedule being considered at the same time, but the schedule is also on the table.

Ms. Gigantes: It is included in clause 2(j) in my motion.

Mr. Revell: It is referred to in clause 2(j), and as I recall, it was agreed that the schedule would be considered at the same time.

Ms. Gigantes: Yes.

Mr. Revell: We then start on the NDP motion, which is seven pages of paper. It starts, "I move that the bill be amended by adding thereto the following schedule," or the item entitled "Schedule." The first item is "Ministry of Agriculture and Food," followed by "1. Ontario Dairy Herd Improvement Corporation." It goes through to the "Ministry of Treasury and Economics," followed by "1. Ontario Municipal Employees Retirement Board."

Mr. D. R. Cooke: I have really lost you. Where are these seven pages?

Ms. Gigantes: It is at the back of the NDP motions.

Mr. Callahan: We would be faster to read this into the record, because if we keep doing this, we will be here to doomsday just trying to figure out how we are going to do it.

Mr. Chairman: We are going to do it by way of having the clerk bring to you exactly what you will be voting on as soon as it arrives. I have Ms. Fish next, and then I will go to Mr. Callahan.



Ms. Fish: I was simply going to say I thought the form of the motion was fairly clear in the way it was drawn. Legislative counsel has keyed committee members into the specific pages of specific amendments that have now been before committee members for two weeks. I thought that was fairly clear, and I hope the committee would similarly be able to read the material that has been tabled with each member for two weeks and be able to vote on it.

Mr. Callahan: I ask this question and I hope you will not take it in a partisan way. When the schedules and the other parts were being put together--and perhaps I will address this to Mr. Gillies--not the first part, but the schedules and the parts, other than your five or six lines there, were they put together in conjunction with the NDP?

Mr. Gillies: No, Mr. Callahan. We both used the same reference. The schedule we have both used is the schedule that was used in the Inflation Restraint Act, 1982.

Mr. Callahan: All right. So this stuff that starts off, "The public sector in Ontario consists of..." was in the--

Mr. Gillies: Yes. That was in the definition section.

Mr. Callahan: I just wanted to know how you arrived at it.

Mr. Gillies: This is the definition of the broad public service as already enshrined in legislation.

Mr. Callahan: I was just curious. I read through both of these, but I could not say definitively whether the wording in one was exactly the same as the other.

Mr. Gillies: I think you will find it is.

Mr. Callahan: You assure me that is the rationale? I am not denying that is where it came from, but we are almost in a situation where, when two members meet in the registry office to close a deal, they have to compare the descriptions in the two documents, and that is what I would like an opportunity, briefly, to do with one of my colleagues, to make certain that wording is exactly the same.

Mr. Charlton: Why? We are only using one set of wordings.

Mr. Callahan: I recognize that, Mr. Charlton, but it is very important. This is the guts of the bill, and I would like that opportunity. I do not think that is unreasonable because it may well be different. Who knows? We may find it is not exactly the same. Then legislative counsel will pick up the wrong one and you will have the wrong schedule in there.

Ms. Gigantes: A point of order, Mr. Chairman.

Mr. Chairman: No, that will not happen because I am about to place before you exactly what it is that you are going to be voting on.

Mr. Callahan: I appreciate that, but as I understand the situation of legislative counsel, he is combining part of Mr. Gillies's opening statement, he is adding the wordy part here, "The public sector in Ontario consists of..." and then he is adding the schedule of the NDP to the list, and

that will be the item we are voting on. I do not know whether the clerk has taken the sheet from the NDP section or the PC section.

Mr. Charlton: The whole thing is ours except for the first five lines.

Mr. Callahan: You guys are taking all the credit for it, are you? I just want to clarify something. I want to make certain that wording is exactly the same.

Ms. Gigantes: A point of order, Mr. Chairman.

Mr. Chairman: Let me try to give you assurance--

Mr. Charlton: Mr. Gillies's words, not yours.

Ms. Gigantes: I think it might help the understanding of friends from the Liberals if we asked legislative counsel, who had the pleasure of working separately with the Conservative and the NDP members of this committee, to arrive at the amendments which have been before the committee for two weeks, if you wanted to do any comparison, for an assurance that he has used in both drafting tasks that he undertook on behalf of the parties separately the same list of agencies, boards, commissions, government ministries and so forth. That might provide the assurance, so that our Liberal friend would not have to go laboriously through every word by himself.

Mr. Chairman: All right. We will ask the legislative counsel to give us a little historical context within which to place this whole matter.

Mr. Revel: I assume Mr. Gillies is going to allow me to talk about the process which was used by everyone. I guess I am in the situation of revealing my instructions.

Mr. Gillies: Quite all right.

Mr. Revel: I was approached by both parties with the same instructions. They were to expand the motion to extend the bill to the broader public sector. The definition that was to be used in both cases was the 1983 inflation restraint legislation.

16:10

The instructions were slightly different from the two parties, and that explains why Mr. Gillies's motion is different in its format, i.e., there is a section 2, which is short with a lengthy schedule. It also explains why there is one extra clause in the NDP motion. The NDP thought the clause that dealt with the boards of education and colleges and universities should be split into two clauses. That explains the differences.

In the 1983 inflation restraint legislation, if you take a look, you will notice that in this NDP schedule and in other places, for example, there were references in the 1983 legislation to boards of health under the Public Health Act. As part of the normal routine of drafting legislation, where we are asked to update or bring forward a precedent, legislative counsel reviewed the internal references to other statutes and made the necessary changes to reflect current terminology and current legislation. It would have been meaningless to have brought forward a reference to the Public Health Act.



In other places, there are deviations from the 1983 legislation. There are a number of the same nature. There was extensive rewriting of legislation since 1980 in the child welfare area. Numerous child welfare statutes were repealed and replaced by one major statute, the Child and Family Services Act, 1984.

We have attempted to capture the flavour of all of those in societies within the meaning of the Child and Family Services Act, rather than through references to children's aid societies under whatever the previous legislation was. There are other changes of that nature.

The other significant change since the 1983 legislation would be in a list under the Ministry of Health, where there were, at page 6 of the NDP list, under what is now paragraph 3, a number of specific hospital laundry services listed. There was no way to verify whether those corporations were still in existence or whether other corporations should be added to the list.

On instructions, that was changed to follow the language that is used with respect to hospital laundries in the Hospital Labour Arbitration Disputes Act. As to the list being the same, I do hope they are the same because, except for clauses (a) and (b) or clauses (c) and (d) I--whichever--the lists were prepared off the same word processor and off the same disk; so they would be the same.

Mr. Callahan: You could have shortened that whole thing by starting out with that. Here I am going blind trying to understand.

Mr. D. R. Cooke: I think I understand what you have done under instructions, but I am hearing of part of this schedule being done in 1983 and part of it in 1984. When was the last time that somebody started from the beginning and completely revised it?

Mr. Revell: My instructions were to bring the 1983 list up to date. This represents the best efforts that were possible to bring this list up to date to 1986 by removing inappropriate statutory references and converting them to the most recent statutory references.

Mr. D. R. Cooke: How did you go about doing that?

Mr. Revell: By researching the statute law.

Mr. Polsinelli: We can feel confident that this covers all scheduled and nonscheduled free agencies?

Mr. Revell: I cannot answer that question.

Mr. Callahan: I have gone through it. If I can assist my colleague, and unless I have a bad photostat of page 6, there is an item in the PC schedule under Ministry of Industry and Trade, which includes the Metropolitan Toronto Convention Centre, which is not listed on the document I have. I have the bold heading of Ministry of Industry and Trade, but there is nothing under it. It may have come off the same word processor. Either the photostat is not working well or somebody better check the word processing.

Mr. Revell: I am reading from the package of NDP motions.

Mr. D. R. Cooke: The NDP did not want that included; the PCs did.

Mr. Callahan: On the one I have, which I was given by the clerk, under the words "Ministry of Industry and Trade" on page 6, there is nothing listed. Yet on the Conservative schedule, it has Metropolitan Toronto Convention Centre.

Ms. Gigantes: It obviously fell off the bottom of the photostat machine.

Mr. Callahan: Where did it fall to? How many other things fell off the photostat machine?

Mr. Gillies: It should be obvious. It is at the bottom of the photocopy page. I guess it was cut off.

Mr. Chairman: I appreciate the fact that you tried to do a job in a relatively brief period of time in order to give us a nice single document to be able to refer to.

Mr. Callahan: That is not a criticism at all.

Interjections.

Mr. Callahan: Accepting the fact that it fell off the photostat machine, as suggested by my colleague in a helpful fashion, can we perhaps deal with some other concerns I have? As I recall, there was an amendment by either the Conservatives or the NDP about the question of--and it probably makes sense--services that were contracted out. I cannot remember it exactly.

Mr. Polsinelli: Before Mr. Callahan proceeds, can I ask a supplementary on the first point both to Mr. Gillies--

Mr. Chairman: As a colleague of yours, Mr. Callahan, will you allow your associate to object to your point?

Mr. Callahan: He is bigger than I am.

Mr. Polsinelli: That is not true.

Mr. Chairman: He is not taller. I know that. Mr. Polsinelli, you have been given that nod of approval.

Mr. Polsinelli: I would like to ask Mr. Gillies and Ms. Gigantes whether it was their intention to cover all schedule 2 and schedule 3 agencies?

Ms. Gigantes: We wanted to cover all agencies.

Mr. Polsinelli: Perhaps you would be interested in covering also the Ontario Food Terminal Board or the Ontario Stock Yards Board, which are not covered by your amendment.

Mr. Gillies: We wanted to cover all of the agencies covered under the Inflation Restraint Act, 1983.

Ms. Gigantes: Exactly.

Mr. Polsinelli: Hold on then. I am having trouble here.

Mr. Davis: Would you like to have some more?



Mr. Polsinelli: No. Essentially, I am asking what their initial intent was? If their initial intent was to cover the full broad public service, then they should cover the full broad public service in their amendments. Are you now limiting it?

Mr. Gillies: If you would like to move any amendments, we would be pleased to look at them.

Ms. Gigantes: We certainly would.

Mr. Polsinelli: I would be more than pleased to understand what you are trying to do.

Ms. Gigantes: We told you.

Mr. Gillies: We wanted to cover every one who was covered under the 1983 Inflation Restraint Act. All the employees that had their wages restrained at that time will now receive the benefit of this legislation.

Mr. Polsinelli: There may be, in your opinion, certain employees who are now civil servants but would not be covered by your amendment?

Mr. Gillies: It would be my opinion that those who had their wages restrained or whose organizations had their wages restrained in 1983 will now have the benefit of the legislation.

Mr. Polsinelli: But those employees who are now on the Ontario Food Terminal Board and the Ontario Stock Yards Board, which are the first two that come to my attention in looking at the first item on schedule 2 agencies, which are not covered by your amendment, would not be covered by your amendment.

Ms. Gigantes: That is correct.

Mr. Polsinelli: It is not your intention to cover all public servants?

Mr. Gillies: It is my intention to cover every one who was covered in the 1983 Inflation Restraint Act.

Mr. Callahan: He is sounding like a broken record.

Mr. Chairman: Is that your supplementary?

Mr. Polsinelli: That is not what the amendment says.

Mr. Callahan: I appreciate what you are saying, Mr. Gillies, and I heard it the first time, but if we add your two--Mr. Gillies, are you there?

Ms. Fish: We wondered if you were.

16:20

Mr. Callahan: If you add your two, if you add your opening paragraph--I appreciate what you are saying, that it is to deal with--

Mr. Polsinelli: On a point of order: It seems to me that Mr. Gillies's amendment and what he is trying to do are two completely different things. I read to you his amendment which starts:

"This act applies to all employers in the public sector, their employees in the bargaining agents representing the employees."

Mr. Gillies and Ms. Gigantes have now indicated that that is not the case and that it only covers those who were covered by the inflation restraint legislation.

Mr. Callahan: I was just getting to that.

Mr. Polsinelli: Perhaps Mr. Gillies and Ms. Gigantes would like to reword their amendment so that it covers what they intended to cover.

Mr. Gillies: If I may respond--

Mr. Chairman: Can we take the speakers in order? I presume you want to hear from Ms. Gigantes, who wants to speak. Do you want to hear the response from Mr. Gillies?

Mr. Polsinelli: I would like to hear a response from both of them. I would like to know what I am going to be voting on. If the amendment they have before this committee does not reflect their intentions, then perhaps the opposition parties should get together on this.

Mr. Chairman: I will go to Mr. Gillies and then Ms. Gigantes in an attempt to get this in order.

Mr. Gillies: I can assure Mr. Polsinelli that everyone we wanted to cover in our amendment is in the schedule. If he would like to move any further amendments to add anyone else in the province, we would be pleased to look at them.

Mr. Charlton: On a point of order: The agencies which Mr. Polsinelli has raised are covered by the amendment. Can we proceed and pass it, please?

Ms. Gigantes: They are covered under section (a).

Mr. Charlton: They are covered under section (a) and they were covered under the inflation restraint legislation in 1983 as well.

Ms. Gigantes: Also, if Mr. Polsinelli will look at--

Mr. Charlton: They are covered under item 2(a) in our amendment, the first page of the amendment.

Interjections.

Mr. Chairman: Ms. Gigantes has the floor.

Ms. Gigantes: One point has been made by my colleagues. Secondly, just for Mr. Polsinelli's peace of mind, on page 2 of our amendment to the amendment, subsection (j), "any other authority, board, commission, corporation, office, person or organization of persons or any class of authorities, boards, commissions, corporations or offices, persons or organizations of persons which may be added to the schedule by the regulations made under this act will also be covered."



That should look after all concerns you have in the future too.

Mr. Polsinelli: Perhaps I could pose a question to legislative counsel. While their initial amendment seems to be broad and cover all the public sector, by setting out the various agencies in a schedule by item (j), could that not be perceived as restricting the impact of the bill to only those agencies that are in the schedule? If that is the case, then should the schedule not be expanded or restricted to reflect the opposition parties' intentions? If that is not the case, if their amendment is broad enough to cover all the public sector, then why have the schedule at all? It would be redundant.

Mr. Revell: If I can reiterate what my instructions were, they were to produce a list that reflected the 1983 inflation restraint legislation. If it is a problem, it would have been the same in 1983 as it is now. I believe the inflation restraint legislation did withstand the test of time in terms of not being successfully challenged.

Mr. Polsinelli: It is a different type of legislation. This type of legislation requires an affirmative action in terms of preparing the pay equity program. If I were the head of an agency that was not listed in this schedule, could I come up with the argument that I am not covered because I am not listed in the schedule? For example, let us take the stadium corporation. Is it covered by this bill? It is not listed in the schedule. Would it have an argument in saying, "Because we are not listed in the schedule, we are not covered?"

Mr. Revell: I do not think so. It would depend. I should let my client speak.

Mr. Chairman: I want to go to Mr. Charlton. I think he was trying to get in on this same point. Do you want to give the floor to Ms. Gigantes?

Ms. Gigantes: I find it quite touching that the Liberal members of this committee are so anxious to make sure the amendments proposed by the two opposition parties are perfect. But until we hear a motion from the Liberals that suggests how they wish to perfect our perhaps less-than-perfect amendment, I cannot see why we should spend a whole afternoon answering hypothetical questions from the Liberals, who are going to vote against these amendments.

Mr. Polsinelli: I can see where we could spend a whole afternoon spending millions of taxpayers' dollars without knowing what we are passing.

Interjections.

Mr. Chairman: Mr. Polsinelli, I have been most lenient with you with respect to your interjections. I am trying to take the members in order. Mr. Davis has been most patient. I will go to Mr. Davis, then Mr. Callahan, then Mr. Charlton and then Mr. Cooke.

Mr. Charlton: I would like to answer Mr. Polsinelli's question before--

Mr. Chairman: No. I am past that already. You had the floor but lost your place in that you gave it up to Ms. Gigantes.

Interjection.

Mr. Davis: I am glad I am not a lawyer, after listening to the drivel that is coming from the other side. What we have in effect, from a layman's point of view, is a piece of législation which distinctly says, under the different schedules that are already in it, these are the people who this piece of legislation is going to affect, period.

Interjection.

Mr. Davis: Quiet. I am talking.

Mr. Chairman: Please restrain yourselves.

Mr. Davis: That is what it says. If the Liberals are so concerned that we are missing somebody and they have finally seen the light and realize it should be an extended piece of legislation, then let them indicate to us the areas they would like to add to the bill and we can get on with it. Otherwise, let us vote. What you are doing, gentlemen--you have learned very well from the opposition--is playing around with a bill so you do not have to do anything with it.

Mr. Callahan: Is that what you have been doing?

Mr. Davis: No. That is not what we are doing. That was when you were the opposition, and now that you are the government you are doing the same thing.

Mr. D. R. Cooke: None of us was ever in opposition.

Mr. Davis: He was.

Interjections.

Mr. Chairman: Let the record show that Mr. Davis pointed to the Minister of Labour and not the chairman. I will move on now to the restrained voice of Mr. Callahan.

Mr. Callahan: I have listened to what Mr. Davis has said, and I agree that he is a layman reading this, but unfortunately, when this bill becomes law it will be looked at not by laymen but by judges and by lawyers. If it is not properly put there, then you will not be achieving the end you wish to achieve.

I think my friend is quite right--we have not changed our position on the bill--but you are going to create a problem for the people who do have to interpret that bill. Unfortunately, or fortunately, Mr. Polsinelli is quite right; if you read paragraph 2, it says, "This act applies to all employers." Then it goes on to say, "for greater certainty, this act applies to" and it sets out a schedule.

Mr. Davis: But if you are not there, it does not qualify.

Mr. Callahan: That is what we are trying to find out. With all due respect, Mr. Davis, it may be that a layman will look at it and say, "It is a marvellous bill, and it is nicely worded." If we wanted to, we could even put it in the vernacular of the street, so we would understand it, rather than in legalese. But the fact is that even if we come up with the perfect bill, lawyers probably will find ways to interpret the words in a different fashion; so let us do the best job we can at this point. That is all I say in response to what you are saying.



Also, if I understand the philosophy espoused by the New Democratic Party and the Conservatives, in conjunction with one another, that this should be a broad public bill covering all the public sector, how can you exclude people on the boards Mr. Polsinelli has suggested?

Mr. Charlton: They are included in the amendment. Mr. Polsinelli was incorrect. We have already explained that.

Mr. Callahan: Just a second, Mr. Charlton. I do not think the domed stadium board was in existence when the restraint program was put forward; so how could it possibly be on the list?

Mr. Charlton: If you would let me answer the question, which I offered to do some time ago--

Mr. Gillies: Anyone not listed in the schedule is covered in clause (a).

Mr. Charlton: Item (a) is an item that was drafted by the previous government to cover everybody in the public sector in Ontario except those specifically listed in the schedule.

Mr. Callaghan: I did not ask the question--

Mr. Charlton: The chairman just gave me the floor, and I am responding to a point that was raised.

Mr. Chairman: He wants to respond to the question you raised.

Mr. Callahan: I still have the floor.

Interjections.

16:30

Mr. Charlton: Item 2(a) of the amendment sets out a number of particular circumstances in which agencies and corporations of the crown are covered. The agencies, boards, etc., listed in the schedule are those that legal counsel who originally drafted the restraint legislation felt, for one reason or another, did not meet the criteria set out in item (a).

Mr. Callahan: I am even more confused now than I was before. Perhaps everybody will say, "Amen."

Mr. Charlton: Perhaps you should go home.

Mr. Callahan: What I am hearing over here--

Mr. Charlton: Is that this amendment covers the entire Ontario public sector.

Mr. Callahan: We have changed the view--I heard from Mr. Gillies quite clearly that it deals only with the people who are covered under the restraint program.

Interjections.

Mr. Chairman: With respect, Mr. Callahan, Mr. Charlton, Mr. Polsinelli, Ms. Fish, Mr. Gillies, other members of the committee, we are

having a number of separate conversations. That may come as a surprise to you. These conversations are making it extremely difficult for the chair to follow this debate. The conversations are going on while I am explaining to you the difficulty the chair is having. I would like to bring some modest semblance of order to this whole undertaking.

Mr. Charlton: For this, we need counsel--

Mr. Chairman: You do not have the floor, sir.

Mr. Charlton: I have not given it up yet.

Mr. Chairman: Oh, you have not?

Mr. Charlton: No.

Mr. Chairman: You did respond to a question. Mr. Callahan had the floor, and I was about to go back to him--

Mr. Charlton: No. I never--

Mr. Chairman: But to give you that opportunity, and if you will direct your comments through the chair rather than through Mr. Polsinelli, who I know is eagerly awaiting your response to this question, I will ask you to continue and then I will go back to--

Mr. Charlton: The response is simple. Legal counsel answered the question some time ago, saying there was no successful challenge to the inflation restraint legislation. Everybody in the public sector was covered under that legislation, and everybody in the public sector in Ontario is covered under this amendment.

Interjection.

Mr. Chairman: Mr. Cooke, please, could we hear from Mr. Callahan? If you have a question, I will be happy to get to you in order.

Mr. Callahan: I do not want to belabour the point, and everybody probably will heave a great sigh of relief, but why would one list such things as specific names of universities and then go on to say that it also covers--I think it says something about covering community colleges and universities again, if I am not mistaken.

Let me ask the legislative counsel. One of the grave dangers of drafting a piece of legislation and attaching a schedule of those to whom it applies is that you might leave one of those people out. Or you may require to put others in so you achieve the equitable approach that the opposition parties would lead us to believe they are trying to accomplish. But you may be leaving some of these people out; if you are, you are not achieving that.

I would far prefer to see something that is maybe two paragraphs--I am sure it could be done, even to the effect of Mr. Gillies's statement--saying, "This act applies to all employers in the public sector," period. The more you put in there, the more opportunities you give the legal profession to earn its fees and the judges to make different decisions based on their interpretation of the law.

By adding all these other things, I am suggesting--maybe I should ask the legislative counsel. Would the simplicity of that phrase, without all this



other stuff added to it, be sufficient to cover the suggestion by the Conservatives? I guess they would get the credit for that, because it was their part of the bill and not the NDP's. They would get the credit for it.

Mr. Revell: The answer simply is no. The public sector is not something that is a precise concept known to law. It is not a term of (inaudible) law. It is a construct that is used around people who are in the public sector and in the public service. It is one of those things where we all know what it means when we say it except when somebody says, "What do you really mean by the public sector?"

All of us will have different ideas as to what the public sector is and where it begins and ends. I think we all agree that people in my position or in Ms. Mellor's position or whatever are in the public sector. We would probably agree that municipalities and school boards are in the public sector. We would probably say the University of Toronto, a huge public institution providing education, is in the public sector.

We might start to disagree when we get down to some of the other items in the list, such as the McMaster Divinity College, a relatively small college of divinity, or any of the other seminaries that are listed here. I assume the reason they are listed here is that they do not come within the test in the appropriate clause up front--I think it is in either clause 2(a) or 2(d)--"every college, university or post-secondary institution."

Mr. Callahan: So that is the reason for the clause.

Mr. Revell: For the most part, from what I have been able to determine, the schedule lists the institutions that do not in any way fit into clauses (a) to (i) and are therefore caught by the catch-all in clause (j). As for institutions such as the Metro domed stadium, which we have mentioned twice, I do not know as a fact what its structure is. It is a corporation, that I do know.

Mr. Callahan: It is a crown corporation.

Mr. Revell: If it is a corporation, a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the executive council, I submit it is caught by clause (a) without any more. The radio station at Ryerson would not be caught, because its directors, etc., are not appointed by the Lieutenant Governor in Council.

Mr. Callahan: I understand now why you do this, but I would not want to have to wade through all these sections to determine whether I won Lottario or whether I am within the framework of the definition, because that is what you are requiring people to do.

Also, is the reason for the lengthy definitions the factor that many of these definitions are a quasi combination of publicly funded and privately funded? If your answer to that question is yes, I will have another question.

Mr. Revell: I am afraid I do not understand.

Mr. Callahan: Reading through some of these, it appears as though they have dealings with and purchase services from the private sector.

Mr. Chairman: As the chairman, can I interject for a moment and caution Mr. Callahan? I know the line of questioning he is pursuing. However,

I would like to advise you, sir--and I am sure you are aware of this, but I say this in a charitable sense--staff are under instructions to prepare certain documentation on behalf of the opposition parties.

Mr. Callahan: So I should not ask them.

Mr. Chairman: I think it is somewhat unfair to ask the staff something other than a general question with respect to the structuring of that legislation or those proposed amendments. To get into the finite balancing of words, as you are doing now, is somewhat unfair to the staff.

You have not asked for mercy on this yet--

Mr. Revell: Soon.

Mr. Chairman: --but I assume we could soon be getting to a line that is quite unfair to the staff.

Mr. Polsinelli: It may help Mr. Callahan.

Mr. Chairman: I will go back to Mr. Callahan.

Mr. Callahan: Mr. Chairman, I agree with you; it had not really twiggged with me until you said it, and I think you are right.

In fairness, can I ask that question of a member of each opposition party? In fact, I think that is the case, and I do not know whether you acknowledge that.

Mr. Polsinelli: Perhaps it would be beneficial if staff were to explain to the committee, particularly Mr. Callahan, the difference between schedule 1, schedule 2 and schedule 3 agencies. That may be helpful in understanding the relationship that some of these agencies have with the private and public sectors.

Mr. Davis: On a point of order, Mr. Chairman: My dear colleague across from me constantly interjects without having the floor. He just did it again. Perhaps we can conduct ourselves with the decorum that is required under parliamentary procedure; that is, Mr. Callahan has to give up the floor or my colleague has to wait until you acknowledge him.

Mr. Polsinelli: On a point of personal privilege, Mr. Chairman: I would like to point out a number of things to the new member for Scarborough West. First, this committee threw parliamentary procedure out the window yesterday by overturning the ruling of our very wise and instructive chairman.

Mr. Chairman: Can you speak up?

Hon. Mr. Wrye: Hansard could be missing this.

16:40

Mr. Polsinelli: Second, Mr. Callahan did concede the floor so that I could ask my question. Third, the chairman did recognize me prior to my asking the question.

Mr. Davis: No, he did not.



Mr. Callahan: I am not sure about the second point, Mr. Polsinelli, even though you are my colleague.

Mr. Chairman: Mr. Callahan?

Mr. Callahan: Do I have the floor?

Mr. Chairman: You do have the floor.

Mr. Callahan: First, I wish to thank Mr. Davis for coming to my defence. Never having heard of such things as schedule 1, schedule 2 and schedule 3--what did he call them?--I would like to have legislative counsel explain them to me.

Perhaps I could ask legislative counsel to tell me the difference between schedule 1, schedule 2 and schedule 3.

Mr. Revell: I cannot answer the question.

Mr. Callahan: You cannot answer it. Can anyone?

Mr. Chairman: Ms. Gigantes, you are offering to answer this question.

Ms. Gigantes: Mr. Chairman, I would be pleased to respond to it. I am not going to deal with schedule 1, schedule 2 and schedule 3, because I do not think that is the matter before us. Members of the Liberal Party have now spent getting on to three quarters of an hour questioning--

Mr. D. R. Cooke: On a point of order, Mr. Chairman--

Ms. Gigantes: Excuse me; I have the floor--questioning us on our amendment.

Mr. Chairman: I will get you next.

Ms. Gigantes: It seems to me the essential question they are asking us is, "Who is covered?"

Mr. Polsinelli: Right.

Ms. Gigantes: The answer they have had time after time is the same boards, agencies, commissions, ministries and groups that were covered by legislation in 1983 for purposes of wage restraint in the public sector. Having heard that answer, they say: "We do not like that answer. Which boards does that mean?"

We all know we can go through this process and question the more than 6,000 agencies, boards and commissions that were in Ontario the last time I checked. If the Liberal members of this committee wish to drag us through the process of questioning all these 6,000 to see whether they are going to fall under this legislation, then we can be here for several weeks doing that. I have limited patience with that process. I hope you will see that while the questions may have been asked earnestly at first--

Mr. Polsinelli: I am sorry.

Ms. Gigantes: Legal counsel tells us they are all covered, but that does not seem to be enough for our Liberal colleagues. They want to ask each

one and then how each is categorized and exactly which clause or which phrase in each clause refers to which of the 6,000 or more.

We would be serving the interests of this Legislature much better if we addressed the question of who is covered in the amendment. We answer the question and say, "Everyone and everybody covered by the legislation that restrained wages in the public sector and those who may be added under the amendment we have put forward." I ask my Liberal colleagues to please accept that as the answer. They may not like the answer, but that is the answer.

Mr. Callahan: On a point of order, Mr. Chairman--

Mr. Chairman: I have speakers in order, and the points of order are quite frankly bending the rules.

Mr. Callahan: No. Believe me, this is a legitimate one.

Mr. Chairman: It had better be, because I am trying to get the speakers in order.

I want to share with Mr. Callahan and other members of the committee one little historical fact and perhaps have you all sit back and relax for a moment on this question. This may not come as a point of particular interest to you, but I served for six years as mayor of a very fine municipality and I had a gavel such as this. It sat on my desk very close to my side and was apparently to be used to bring order to the meetings whenever necessary. On not one occasion during the six years I sat in that chair did I have to use the gavel. I am getting increasingly close not only to using it but also to throwing it at this committee.

I want to ask all members of the committee to try to co-operate with the chair. I am taking your names and recognizing your participation in the debate as I see you. I am not in any way showing any favouritism towards any party or any member. I have Mr. Gillies on next, waiting patiently to speak. I will take your point of order and then go to Mr. Gillies.

Mr. Callahan: The point of order is that when I relinquished the floor to my colleague, it was for her to explain schedule 1, schedule 2 and schedule 3 employers. She chose not to do that, but I did not interfere at that point. I could have raised the point of order right at that point and had the floor back again. With respect, I suggest that is probably the first time a point of order has been put forward in this Legislature that really was a point of order. Okay?

Mr. Chairman: Yes. You have the floor.

Mr. Callahan: The thought I am getting from the opposition is that this is just a silly exercise, but I want to take the point forward. My concern is that if within the framework of the people whom this bill protects we have entered into the private sector as well, then more is happening than just the broad public sector. That was going to be the nature of my question to Mr. Gillies and Ms. Gigantes. There are areas here where there would appear to be some private sector activity.

My next question would follow from that, if there is private sector activity, particularly in the light of an amendment that is being sought by the New Democrats or the Conservatives to the effect that an employer shall not contract with a person for the supply of goods and services unless the



person can demonstrate to the employer that there are no differences in compensation between males and females who are employed by the person and are performing work of equal or comparable value.

Anticipating that amendment, I have to ask a question because, as I read it, it means that people dealing, say, with municipalities to collect garbage or perform any other type of service, even for the hospitals that get their laundry done--I think of that massive place, Scarborough Centenary Hospital--would have to meet that test or they could no longer contract or would be in contravention of this act. That is where it becomes particularly significant.

This is not something I throw out to you lightly. You may think the question has no meaning, but if somebody can answer that for me, I will certainly feel great relief that we are carrying this not only into the broad public sector but also spilling over into the private sector, with the result that a lot of people who provide contractual services to a whole host of public bodies will, in the future, until the private sector bill comes in, be deprived of the opportunity of doing so.

Mr. Chairman: Mr. Gillies, you now have the floor and you may want to use this occasion and be so moved as to respond to the questions raised by your honourable colleague. Proceed, if you will.

Mr. Gillies: First of all, it has become clear in the last hour and so many minutes that the strategy of the Liberal Party is one of obstruction and delay on this bill. I want you to know that we are not stupid in this committee. We understand exactly what you are doing. I was parliamentary assistant to the former Minister of Labour for several years and at one time I carried Bill 141 through the House for more than a year because of the very kind of strategy you are using now. I want you to understand that.

Mr. Callahan: Is that the answer to my question?

Mr. Gillies: No. The answer to your question is that you asked me about private sector contracting out, which is outside the scope of this amendment. We are debating this amendment. You understand the coverage of this amendment because it has been explained to you repeatedly by legislative counsel, by Ms. Gigantes and by me. Mr. Callahan, you are now wasting time.

Mr. Callahan: May I have a supplementary to that, Mr. Chairman?

Mr. Gillies: You may ask a supplementary, Mr. Callahan, but you will not get another time-wasting answer from me.

Mr. Callahan: I do not intend to respond in the way you did, to try to put it in a political vein. I am asking you a legitimate question.

If you look at the people set out in the schedules that are attached to the amendment that you and the NDP have proffered, they spill over into the private sector. My question to you or Ms. Gigantes is, how are you going to tell the people who are out there contracting with municipalities for garbage pickup or with the hospitals for linen cleaning, and a whole host of others, that they have to get into pay equity immediately?

The legislation does not have to be in place. They are required to do it or they cannot contract with those bodies. I suggest that is a legitimate complaint. I think you could have given me a legitimate answer rather than playing politics with it and saying that is what I am doing.

Mr. Gillies: The question of contracting out is not addressed in this amendment. We are addressing a very specific amendment that Mr. Callahan has in front of him. He now understands the scope of that amendment and he is wasting time, which clearly is the Liberal strategy.

Mr. Callahan: Why is section 3(b) there then?

16:50

Mr. Chairman: Can I move on to Mr. Cooke, who is next on my list?

Mr. Callahan: I guess I am not going to get an answer.

Mr. D. R. Cooke: I wish to express the fact that I am appalled to hear from Ms. Gigantes and Mr. Davis that we should be restrained in our expression of our opinions on these things. I am hearing two different views as to what this section means. I heard the view from Mr. Charlton that it applies to all employers in the public sector and I heard from Ms. Gigantes and Mr. Gillies that it applies to those who came under the inflation restraint legislation.

Mr. Charlton: Legal counsel said they were both the same.

Mr. D. R. Cooke: No. We have not been able to--you are right, Mr. Chairman, that it is not fair for us to press legal counsel for definitive opinions on these things. I have not heard that said by legal counsel.

Mr. Charlton: Legal counsel said no one successfully appealed.

Mr. D. R. Cooke: That does not mean they are both the same.

Mr. Charlton: Yes. The entire public sector was covered.

Mr. D. R. Cooke: That does not necessarily mean anyone has tried to appeal. I still do not know at this moment where this legislation stands. I do not know what it means. I am also getting the impression, particularly from the two proponents of the legislation, that I do not have a right to know what it means and I resent it very much.

Mr. Charlton: The question has been answered five or six times.

Mr. Chairman: Ms. Gigantes is on my list, but I will ask whether you would like--

Mr. D. R. Cooke: I would like her to answer our questions when she gets her chance, rather than to lecture us about whether we have the right to freedom of speech, which she feels she has at all times. I have sat on this committee for 16 months and listened to it ad infinitum, ad nauseam.

Mr. Charlton: That has been answered five or six times.

Mr. D. R. Cooke: Then she can answer it 16 times.

Mr. Callahan: You have not answered the private sector spillover at all.

Mr. Charlton: If you think that is playing politics, I think it is a very important question.



Mr. Chairman: Would the committee like to adjourn or do you want to carry on? The chair is having difficulty controlling the committee. Ms. Gigantes, would you like to participate in responding to questions?

Ms. Gigantes: Given the fact that these amendments have been tabled with committee members for more than two weeks and that we spent two full committee days taking a dry run through this bill, examining the meaning of government clauses in Bill 105 and the amendments tabled by the Conservatives and by the NDP, I regret the Liberal members of this committee still do not have the answers they want. They are trying to force us to give answers that are not there. We are not going to be able to satisfy them. The attempt has been earnestly made.

In regard to the point about the clause dealing with the question of contracting out which was proposed as an amendment by the Conservatives, that clause has not has been put forward by this party as a proposed amendment.

Mr. Callahan: Are you going to vote against it?

Ms. Gigantes: When we get to discussion and consideration of the proposal and voting on it, the argument you are raising out of place on this amendment will become an important discussion point.

Mr. Callahan: Then let us vote on that first. Let us see where it goes.

Mr. Chairman: If it is the committee's decision to separate any of the items before us, we can so do.

Ms. Gigantes: We agreed we were dealing with section 2 and the amendment and subamendment to section 2.

Mr. Chairman: Yes, as being friendly and compatible.

Ms. Gigantes: When are we going to deal with it?

Mr. Charlton: We have a motion on the floor.

Mr. Polsinelli: I hope we will be able to take our regular hourly break fairly soon. Prior to doing that, I want to ask Ms. Gigantes and Mr. Gillies a number of questions and I sincerely hope they have answers to them. For example, what does the Association of Municipalities of Ontario think of this legislation now applying to the 838 municipalities in Ontario?

Ms. Gigantes: I am sorry, I missed the first part of the question.

Mr. Polsinelli: What does AMO think of this legislation now applying to the--

Mr. Gillies: Mr. Polsinelli could avail himself of the legislative library research service to get that answer.

Mr. Polsinelli: That is a fairly arrogant response from Mr. Gillies. Ms. Gigantes--

Mr. Gillies: We are not going to co-operate in your time wasting, I am sorry. I assure you, Mr. Polsinelli, that our intention is that this amendment will be voted on before the committee adjourns.

Mr. Polsinelli: Mr. Gillies, I am quite surprised that you, of all people, want to ram legislation down the throats of 838 municipalities without giving them notice and without giving them an opportunity to be heard. I think the very least you could have done, prior to introducing this, was to consult with them and with the groups that would be covered. I asked you what your consultation process resulted in. What was their answer? Are you not prepared to share that information with members of this committee?

Mr. Gillies: I think you should call them.

Ms. Fish: Go back to theatre school, Claudio. This is really an appalling performance.

Mr. Gillies: I am sorry, Mr. Polsinelli, we are not going to help you with this farce. I am sorry. You will have to do it by yourself. If you want to talk for three or four weeks on this, do not expect the opposition parties to help you. Do it yourself.

Mr. Chairman: I suggest the committee takes a break.

The committee recessed at 4:57 p.m.

17:14

Mr. Chairman: Members of the committee, if we could get back to the matter at hand, the minister would like to make a comment.

Hon. Mr. Wrye: Just so it is understood at this point before we resume these discussions, I assume the committee will understand that before any of these measures come to a vote, at whatever time it thinks appropriate, I want to comment on this on behalf of the government.

The government indicated a concern about the procedural issues we talked of yesterday. We have not yet stated our position on the substance of the amendment which is now before the committee. I have a few comments to make on behalf of the government in that regard.

It now appears that clause-by-clause debate on this bill will not be completed today. I indicated to you yesterday, Mr. Chairman, that I will not be able to be here next Monday and Tuesday. The government is having the Conference on Northern Competitiveness in Sault Ste. Marie on Monday and Tuesday and I will be there on both days. I regret that, but the conference was scheduled some time ago.

Mr. Gillies: I can understand the constraints and obligations the minister finds himself under. Since he had confidence in the parliamentary assistant to carry the bill through many of the committee proceedings, would he similarly have confidence in the parliamentary assistant carrying on with the bill clause by clause for those two days next week?

Hon. Mr. Wrye: I have great confidence in my parliamentary assistant, as I do in all the members of my party on this committee. The government believes this is a very important piece of legislation and I believe it is important that I be here for clause-by-clause discussions. My parliamentary assistant will be carrying a number of the government amendments and I believe that will be an appropriate way to proceed. It is the normal way one proceeds with important, major pieces of legislation. We would like to proceed with this with the concurrence of the committee. I regret this conflict but, as I said, the conference was scheduled some time ago.



Ms. Gigantes: Following on the minister's indication that he will be making a few statements, may I have an idea of how long his few statements will take so we can have a sense of whether we will be able to deal with this matter--which has been before us for two sittings--by the time the committee adjourns at six o'clock?

Hon. Mr. Wrye: I am not sure how long I will be.

Mr. Chairman: In the interest of getting some order into the committee's business, would it be acceptable to the committee to allow the minister to make his comments now, since he said he wanted to make them prior to the vote being taken? If it meets with the acceptance of the committee, we can move on to the minister's comments now, recognizing that we have a time factor to contend with.

There are just over 45 minutes remaining in our deliberations at this sitting. I suggest that to the committee members. The minister has asked for the opportunity and I would like to give it to him and allow him the maximum amount of time, which would mean he should proceed at this point.

Mr. Polsinelli: While I have no objection to the minister's making a statement at any time in this committee, there are a number of issues the committee should deal with prior to his statements. I would like to continue with my remarks now before losing the thrust of what I intended to say before the break. I am in the committee's hands on this issue.

Mr. Chairman: All right. Ms. Gigantes, I am allowing a quick free-flowing discussion, but I want to get back to the order. Ms. Hart has the floor.

Mr. Polsinelli: I thought I did.

Mr. Chairman: You had given up the floor when we took the break. Do you now suggest that you had not completed your comments? Ms. Hart, you will have to be patient and wait for Mr. Polsinelli, your colleague. I am sure it will not disturb you too greatly.

Ms. Gigantes: Mr. Chairman, with respect to the order of this meeting, is it your intention to reach a point at which we can vote on the section, the amendment and the subamendment before we adjourn today?

Mr. Chairman: It is the wish of the chair that we proceed with the business of the committee, which means we should take a vote. It would depend on a decision of the committee. It is not my intention to restrict members of the committee in any way from exhausting their requests for information. However, any member of the committee can challenge the chair to proceed with the vote simply by indicating that he or she wishes to do so. Therefore, I cannot proceed, other than by a committee member making that suggestion.

Mr. Gillies: I attach a great deal of importance to the minister's comments, particularly in view of the fact that he will not be able to be with us next Monday or Tuesday. In view of that, if I had the floor right now, I would defer to the minister. I wonder if Mr. Polsinelli might afford us that same courtesy. It is important that the minister be heard today or the committee will not be in a position to hear his thoughts for another two weeks.

Mr. Chairman: All right. A well-reasoned position has been put forward by Mr. Gillies. Mr. Polsinelli, are you prepared to give up the floor and allow the minister to proceed?

Mr. Polsinelli: I would like to make a few remarks prior to allowing the minister to proceed, if I may.

Ms. Fish: I am sure, after the minister shook his head, "No, do not yield the floor to me."

Mr. Chairman: All right, Mr. Polsinelli, you have the floor, followed by Ms. Hart. We will proceed on that basis. I want to be very clear to Ms. Gigantes: yes, I intend to proceed to a vote tonight on this matter, but that will remain in the hands of the committee and how it orders up its business from this point on.

17:20

Mr. Davis: I would like to speak after Mrs. Hart.

Mr. Chairman: Fine. I will put you on the list.

Ms. Gigantes: Ms. Hart.

Mr. Davis: Yes, it is Ms. Hart.

Mr. Polsinelli: I must say that of all the committees I have served on in the past 18 months, this has become by far the most interesting. I was quite disturbed, to put it mildly, by Mr. Gillies's comments just prior to the break. He made serious allegations that the government was becoming obstructionist and that the Liberal members of this committee were trying to stall for time, when in fact we came up with, in my opinion, some very valid points.

It seemed the amendments placed by Mr. Gillies and the amendment adopted from Ms. Gigantes were at odds. Mr. Gillies wanted the legislation to apply to the 1982 Inflation Restraint Act. Ms. Gigantes wanted it to apply to everybody in the public sector, however that was defined. They were not even prepared to discuss whether or not a number of agencies I brought to their attention were covered. The response from Mr. Charlton was that they are covered. Mr. Gillies again responded that everybody covered by the inflation restraint legislation was covered. I am still not sure what is covered. I think I am sure what they would like to have covered in the legislation on their amendment, but the bottom line is that I am not sure.

That said, it seems to me that when the government proposes a bill or an amendment to a bill, it is incumbent on the government to justify and defend the bill or the amendment in committee. Mr. Gillies's reaction is that he is not prepared any longer to participate in this process, Mr. Gillies being the one who moved the principal amendment to this bill, extending it from 76,000 to more than 650,000 public service employees. He then comes to this committee and says: "We are not prepared to defend that amendment. We are not prepared to discuss that amendment. All we want to do is vote on that amendment." This seems, in my opinion, to be a very irresponsible position. I am surprised that a member of this House who is now in opposition is taking that attitude when proposing an amendment to a bill that has very serious implications for the women of this province. On a personal note, it seems the Conservatives are as arrogant in opposition as they were in government. That bothers me.

Mr. Davis: I would not talk if I were you.

Mr. Polsinelli: I am only learning. I sincerely hope Mr. Gillies re-evaluates his position on that, because I have serious concerns I would



like to discuss with him and Ms. Gigantes, notwithstanding the events that transpired yesterday, where hundreds of years of parliamentary practice and democracy were thrown out the window and where a member of Mr. Gillies's party, who happens to be sitting as the chairman of this committee, ruled against him and indicated the motion was out of order. Irrespective of that, irrespective of the precedents from Erskine May and Beauchesne, irrespective of the great number of precedents brought to the chairman's attention yesterday, the majority opposition members in this committee defeated the chairman's ruling.

Irrespective of all that, I sincerely hope they take the approach now of discussing their amendment in a serious vein rather than in the frivolous and irresponsible manner it has been dealt with today. If Mr. Gillies and Ms. Gigantes do concur with that, I hope we can start talking about some aspects of this amendment.

I am particularly concerned about the extension of this bill to municipalities and to the various boards of education in this province. As I am sure the chairman is aware, there are more than 838 municipalities in this province. I understand more than 50 per cent have fewer than 10 employees; many of them subcontract out their work. I am not sure how many boards of education there are.

Since he was reeve of the fine city of Sarnia, I am sure the chairman is aware that in determining their annual budgets, the municipalities sit down, I think, three or four months prior to the year in question. There is the reeve, the aldermen and the municipal officials. They go through a very lengthy and detailed process of determining what the expenditures will be for the year after.

I did that when I was a member of North York council. I remember the gruelling nights, evenings and days when we sat with the municipal officials, with the city treasurer, the public works commissioner and all the other commissioners we had in North York, to try to determine a budget that would actually meet the needs of the city while at the same time be fiscally responsible so that taxes would not increase, or at least not increase far beyond the inflation rate. When I was in North York, I am happy to say the increases for the two years I was there were very close to, if not below, the inflation rate.

It would be fiscally irresponsible and generally a bad approach at this point to go to those municipalities, to those school boards not to mention the other thousands of agencies that go through a similar process every year, a year after the fact, after they have determined their budgets and after they have collected their taxes, and say: "You are going to need money retroactively. You now are going to have to collect money from your taxpayers after the fact because you have to comply with a certain piece of legislation."

I should say at this point that there will come a time in the very near future when they will have to go to their taxpayers and say: "We need more money to comply with pay equity. We need more money to justify and eliminate the systemic gender discrimination that has occurred over hundreds of years in this province and in this country."

They will be going under the government's plan and they will have notice in advance so that they will be able to plan their budgets. Months before they actually have to dish out any money or collect any money from the taxpayers, they will be able to determine how much money they need and collect that money

from their taxpayers to comply with any pay equity legislation the government has.

One of our research assistants has put together a few figures on the proposed amendment from Mr. Gillies and Ms. Gigantes. I hope that Mr. Gillies and Ms. Gigantes will comment on this and in particular on the impact it will have on these particular municipalities.

I will deal first with the Brant County Roman Catholic Separate School Board, which has an annual payroll of \$5.8 million and the Brant County Board of Education, which has an annual payroll of \$37.9 million. My quick analysis of the amendments that have been put before us, particularly of the retroactivity aspect, indicates to me that the Brant County Roman Catholic Separate School Board and the Brant County Board of Education will be \$1.3 million dollars in arrears as soon as this bill is passed in terms of money they should have collected.

They will have to go back to their taxpayers and say to them: "We are sorry, but the government passed a bill saying that we need an additional \$1.3 million that we should have collected from you in 1986. We did not do it because we had no notice of it and we were not able to make any representation to the government on that issue. Come 1987, we are going to have to collect not only the \$1.3 million retroactively but also an additional \$1.3 million or whatever the sum may be for the 1987 period."

The Ottawa Roman Catholic Separate School Board, on the other hand, has a budget of only \$33.9 million--

Mr. Chairman: Were these chosen at random, as a matter of interest?

Mr. Polsinelli: They are certain figures that popped out of the air.

Mr. Chairman: The chair is trying to follow your--

Mr. Polsinelli: There are certain counties and cities that somehow come to mind.

Ms. Gigantes: Lambton county is next.

Hon. Mr. Wrye: Lambton county is next.

Mr. Polsinelli: The Ottawa Roman Catholic Separate School Board has an annual budget of \$33.9 million and the Ottawa Board of Education has an annual budget of \$112.4 million. Three per cent of their total payroll works out to roughly \$4.4 million. I submit that the same argument applies to them. In 1987, they will have to go to their taxpayers and say: "We spent \$4.4 million of your money in 1986 that we did not collect and we did not collect it because we had no notice of legislation passed by the province. I do not know why it did that but we have to correct the systemic gender discrimination as the date the bill received royal assent. By the way, taxpayers, we have to collect not only an additional \$4.4 million for 1987 but also \$4.4 million for 1986, which we should have collected last year, but we did not have the power of foresight at the time."

The Hamilton-Wentworth Roman Catholic Separate School Board--



Ms. Gigantes: On a point of order, Mr. Chairman.

Mr. Davis: On a point of order, Mr. Chairman.

Mr. Chairman: I have Ms. Gigantes first and then Mr. Davis with points of order.

Ms. Gigantes: I wonder wonder Mr. Polsinelli will allow a question here because I think the discussion he has entered betrays a misunderstanding of the bill and of the amendments. It might be helpful if he looks at section 29 in Bill 105 and realizes that amendment of section 29 is not proposed by us.

Mr. Polsinelli: I am sorry, Ms. Gigantes; I missed that.

Ms. Gigantes: If you look at section 29, I think all of your scenarios will fade away and you will feel absolutely certain that these boards of education and municipalities will be able to implement--

Mr. Polsinelli: Is that section 29 of your amendments?

Ms. Gigantes: It is section 29 of your bill. We propose no amendment to section 29.

Mr. Polsinelli: I thought I had seen an amendment that led to the act coming into force on the date of receiving royal assent.

Ms. Gigantes: Not to the section that sits in the bill.

Mr. Polsinelli: I am sorry?

Ms. Gigantes: The section that sits in the bill as section 29 remains in our proposed amendments.

Mr. Polsinelli: Then it is the amendments come from the Conservative party that you have chosen to join ranks with on this section. I believe it reads that the bill would come in force on the date it receives royal assent rather than the proclamation date as indicated in the bill.

Ms. Gigantes: I draw your attention to section 29. It stays in the bill according to our amendments and will relieve all the dilemmas you are posing.

Mr. Davis: On a point of order, Mr. Chairman.

Mr. Chairman: I would like to clear up the first point of order and then I will go to Mr. Davis. I am trying to keep the thing in an understandable flow for the moment.

Mr. Davis: I have no problems with that.

Mr. Chairman: As soon as I have cleared this up, I will get right to you.

Mr. Polsinelli: It seems that section 29 of the bill requires--perhaps we can get Dr. McAllister to explain this to me, but it seems to me that section 29 says that all the money that is required as of March 31, 1987, shall be paid out of the consolidated revenue fund.

Mr. Davis: On a point of order, Mr. Chairman: Are you allowing Ms. Gigantes's question as a point of order?

Mr. Chairman: It appears that Mr. Polsinelli is accepting it as a reasonable point in terms of clarification of the statements he has made.

Mr. Davis: That is your decision.

Mr. Chairman: It is not being challenged. I am allowing him to carry on and I will go to your point of order next.

Mr. Polsinelli: I accept Ms. Gigantes's point that perhaps I was a little off base in determining that they should have collected the money in 1986 and that it is the taxpayers of Ontario who will have to pay that money retroactively, because under section 29 of the bill that money would come out of the consolidated revenue fund. While the province does not undergo a budget process similar to that of the municipalities, I am sure that every year it undertakes to determine what its annual expenditures will be and collects income taxes in an appropriate fashion.

While my particular analysis of the various school boards does not apply to the school boards, it does apply to the people of Ontario generally. I will leave it to Mr. Davis. I am anxious to hear what he has to say on his point of order.

Mr. Chairman: Can we go to Mr. Davis's point of order now?

Mr. Davis: I would like a ruling. It is my understanding that when we are in committee for clause-by-clause, the purpose is to ask questions about the legislation or about a particular section or clause. It is not an opportunity to make political statements. I think my colleague across from me can use a lead-in to ask a question, but I do not think he can sit here and make a statement, as he has done for 10 minutes, without asking questions. I would like your ruling on that.

Mr. Polsinelli: Perhaps I can follow up on that point of order--

Mr. Davis: Just a minute, Mr. Chairman. I have asked you to make a ruling. I did not ask Mr. Polsinelli to make a statement.

Mr. Polsinelli: Perhaps, Mr. Davis--

Mr. Davis: I have the floor.

Mr. Polsinelli: --you did not hear your colleague who refused to answer questions beforehand.

Mr. Davis: I point out to you that your party refused to answer questions on Bill 30. Mr. Chairman, you have to make a decision and I want you to make the decision.

Mr. Chairman: I am quite prepared to do that. My decision in this and in all matters is that I attempt to achieve balance. The balance I attempt to achieve with respect not only to Mr. Polsinelli but also to other members of the committee is that debate is totally in order. Questions can be raised on the various clauses within the context of the bill. It is also quite permissible in committee to debate those issues and to share one's views with the other members of the committee. Mr. Polsinelli is doing that.



I, you and other members of the committee may not necessarily agree with Mr. Polsinelli. We will all have the opportunity within the democratic process to allow our views to be heard by the other members of the committee. Mr. Polsinelli is going on at some length and I have to allow him to use this process to do just that. My ruling is that he is quite in order.

Mr. Polsinelli: Mr. Chairman, it appears your ruling again is a very learned one.

Mr. Davis: I doubt it.

Mr. D. R. Cooke: The chairman has the wisdom of Solomon and Job.

Mr. Chairman: Will you speak up when you are making these comments?

Mr. D. R. Cooke: Mr. Chairman, I am so impressed by this. You are doing a terrific job.

Mr. Chairman: Thank you.

Mr. Polsinelli: As my colleague points out, Mr. Chairman, you have the wisdom of Solomon and Job.

Mr. Chairman: Who was the second one?

Mr. Polsinelli: I am not sure who that is.

Mr. Callahan: You are doing a good job, Job.

Mr. Polsinelli: I neglected to point out that it would cost the Hamilton-Wentworth Roman Catholic Separate School Board, combined with the Hamilton Board of Education, more than \$4.4 million and it would cost the Scarborough Board of Education roughly \$7 million a year.

Irrespective of whether they should have collected this money retroactively or whether it was the obligation of the province through its income tax system to collect this money retroactively, it boils down to the fundamental question of what right we have as a Legislature to pass laws that affect specific groups without giving them notice of what we are going to do. What right do we have as members of the Legislature to require the expenditure of government money without giving the public an appropriate opportunity to be heard? My colleagues from the New Democratic Party on many occasions have insisted, not only requested but insisted the public be given an opportunity to be heard, particularly on legislation that has a direct impact on them.

I remember from my days on North York council when two notable NDP council members insisted on a public hearing on every issue that had anything remotely to do with the public and affected the public's rights. The seven boards of education I have mentioned, which would require almost \$20 million a year in additional expenditures, have not been given an opportunity to be heard. We have not asked them what they think of pay equity legislation. We have not asked them whether this legislation suits their needs and whether they can accommodate it in their bailiwick.

My colleagues from the third party often, or all the time, ask that the public hearing process be respected and that groups impacted by legislation be given an opportunity to be heard. It should be incumbent on them after having moved this motion to move a similar motion requesting that this committee hear them.

The boards of education are very important, but this legislation also impacts 838 municipalities in Ontario. More than 50 per cent of these municipalities have 10 or fewer employees. This legislation has a contracting-out provision requiring that any subcontractors be in compliance with pay equity. There is an amendment before this committee relating to this legislation requiring that if that amendment carries, and in all likelihood it will carry because the opposition members seem to be in agreement with it, it will require all 838 municipalities, plus the thousands of agencies impacted by this legislation, plus all the school boards--

17:40

Ms. Gigantes: On a point of order, Mr. Chairman: We are not debating that amendment.

Mr. Chairman: That is correct. That amendment is not being debated.

Mr. Polsinelli: Unquestionably, but it is leading up to a point.

Mr. Chairman: If you mention it in passing and get back on the main point, I am sure the other members of the committee will be most interested in what you have to say following it. If you would pick it up at this point and carry on, we would be very appreciative.

Mr. Polsinelli: As I was saying a few minutes ago, there is an amendment to the bill before this committee that in all likelihood will carry because of the stated positions of both the NDP and the Conservative party requiring contract compliance. All the agencies, boards and commissions, municipalities and school boards that will be affected by this legislation will not be able to deal with any outside entity, unless that entity proves that it is in compliance with pay equity and that females are not being undervalued and not being underpaid on the basis of systemic gender discrimination.

It seems to me that has a tremendous impact on the private sector, an impact that perhaps--

Ms. Gigantes: On a point of order, Mr. Chairman: May I again ask you to draw the member's attention to the amendment under discussion?

Mr. Chairman: The amendment under discussion relates to section 2, as Mr. Polsinelli is well aware. I draw to your attention again that you are perhaps straying from the point.

Mr. Polsinelli: Mr. Chairman, I was this close.

Mr. Chairman: I know. I realize it was a modest detour, but I must ask you to get back on the main point.

Mr. Polsinelli: I was this close to reaching my main point, and it seems that I had to have anticipatory remarks to justify the main point.

The amendment in section 2 that is proposed by the Conservative party and supported by the third party, on which have come together and reached a common point that they are both prepared to support, has a tremendous impact on all the municipalities in Ontario because it requires them to comply with this legislation. It has an impact on all the school boards in Ontario because it requires them to comply with this legislation. It has an impact on all the



agencies, boards and commissions of this government, all the schedule 2 and schedule 3 agencies of this government--

Ms. Gigantes: We came on purpose to do it.

Mr. Polsinelli: It is also important, in looking at that impact, to look at the other amendments that are before this committee. That contracting-out compliance amendment will impact on the municipalities and the private sector as greatly as this section 2 amendment.

The point is that we should not force legislation down the throats of any members of society, any of the people of Ontario, without giving them an opportunity to be heard. We have not done this. When this bill was advertised and when we had our public hearing process, we did not have the Association of Municipalities of Ontario coming before us and making representations to determine whether this bill would meet its needs, whether it could comply with this bill. We did not have the school boards coming before us to state whether they could comply with this legislation.

Ms. Gigantes: They all made submissions.

Mr. Polsinelli: We did not have the Ontario Hospital Association before us.

Ms. Gigantes: Yes, we did.

Mr. Charlton: You did not read the submissions very well, did you?

Mr. Polsinelli: We did not give notice that this would be impacted.

Mr. Davis: Every one you have named so far made a submission.

Mr. Polsinelli: None of them believed it would impact on them.

Mr. Davis: Do not be so silly.

Mr. Charlton: They came and made submissions because two parties had announced they intended to expand the bill.

Mr. Chairman: In terms of the balance of the business before the committee and recognizing that we have about 20 minutes on the clock, have you concluded your remarks?

Mr. Polsinelli: No, I have not. I do not recall the Art Gallery of Ontario or CJRT-FMNC coming before this committee.

Mr. Davis: Those were the days you missed.

Mr. Chairman: Are there others on your list you want to share with us?

Mr. Davis: The hog callers of Sweden did not come either.

Mr. Gillies: You have nine pages, Claudio. Come up with some more who did not come in.

Mr. Posinelli: It has been done in this House for members to attempt to stall the procedure of this House and in committees by senselessly reading

through nine or 10 pages or even the KWIC index. I assure the members of this committee I do not intend to do that.

The simple point is we have nine pages of people, agencies, boards and commissions that will be covered by this legislation. I accept from the third party that some of them may have had notice that this bill would be extended to them. Many of them did not have notice.

It is incumbent upon us to reopen the public hearing process and advise the agencies we have listed in this schedule that the committee has before it an amendment that would extend this bill, irrespective of parliamentary practice and procedures and the standing orders, to cover them and that they would have certain obligations under the bill. It is incumbent upon us to advise them of that and to give them an opportunity to be heard, either in written or in oral form.

Without belabouring my discussion at all, I would move that--

Mr. Gillies: You cannot. There is a motion on the floor.

Mr. Chairman: That is correct. There is a motion on the floor in front of an amendment and a subamendment.

Mr. Gillies: If you care to vote on the amendment, we would be pleased to hear your motion.

Mr. Polsinelli: Then it is my intention to proceed with a motion to reopen the public hearing process.

Mr. Gillies: It is out of order.

Mr. Polsinelli: I understand that. Just listen.

Mr. Chairman: He is speaking of his intention, not placing an amendment or a motion.

Mr. Polsinelli: It is my intention to reopen the public hearing process.

Mr. Davis: On a point of order: He cannot do that. There is a motion and an amendment on the floor. He cannot turn around and reintroduce.

Mr. Chairman: I am accepting what Mr. Davis is saying as being factually correct, but I want to suggest to my colleague that the chair is not accepting Mr. Polsinelli's comments as an official motion at this time. He is making a suggestion of a future motion, which is quite in order, but until the chair indicates he has accepted that motion, which he cannot do, as you well know, and each member of this committee is well aware, there are amendments and subamendments on the floor, I will not accept another motion. He can speak at whatever length he wishes about what he intends to do at some future point. I have no way of ruling him out of order on those grounds.

Mr. Polsinelli: As I see it, and still on that point of order, we have a number of motions before us. Does that mean I will not be able to move any additional motions until we have adopted all of them?

Mr. Chairman: No. You know full well, sir, and the chair wants to share with you in a friendly manner, the fact that when you do, in fact--



Mr. Polsinelli: I respect your opinion.

Mr. Chairman: I realize that. You have put that on the record a number of times, which is why I am taking your question very seriously, in spite of the fact that we are quickly running out of time. When an amendment and a subamendment are on the floor, until I have dealt with that business I am not in a position to deal with any further motions and/or amendments.

Having said that, all the other amendments being proposed for future consideration will be dealt with in an orderly fashion.

Mr. Polsinelli: I appreciate that explanation, but I would like to explain that it is my intention to move a motion that the public hearing process be reopened and that the agencies, boards and commissions and the municipalities and school boards identified in this amendment to section 2 be notified of this motion before the committee, that it is being taken very seriously by this committee and that they be given an opportunity to be heard. That opportunity to be heard is fundamental to the democratic process.

17:50

I understand it is proper and it is within the procedural rules that a motion such as that could be taken with the unanimous consent of the committee. The public hearing process is a very important process. This bill is now being extended to thousands of agencies, to 838 municipalities and to school boards throughout Ontario. I submit that many of them do not expect that this legislation will be impacting on them so quickly, with so little notice and with no lead time. I request that the committee give unanimous consent in order for me to place my motion.

Mr. Callahan: Can I have a point of clarification, Mr. Chairman?

Mr. Chairman: Would you like to deal with your colleague's request for unanimous consent, or do you want to make your comment now? I am trying to keep things on track.

Mr. Callahan: I want to get a point of clarification. It was raised by Ms. Gigantes that section 29 will take the impact off school boards. I would like her to clarify this because, quite honestly, I do not understand it.

Ms. Gigantes: We have a motion on the floor. Mr. Chairman, will you assist us in keeping order here?

Mr. Chairman: Yes, I am trying. I ask Mr. Callahan to hold the question until we deal with the request for the unanimous consent of the committee to deal with this other matter. Ms. Gigantes, I will allow you to go first in response to the request of Mr. Polsinelli.

Ms. Gigantes: I am willing to listen to discussion on this, but it seems to me that the discussion just prolongs what the government does not want to see happen, which is a vote being taken on the first sections of the bill.

Beyond that--and, Mr. Chairman, please correct me if I am wrong--when we first sent out indication to the public that we were going to proceed with Bill 105 and invite members of the public and organizations to come back and make presentations concerning Bill 105, we also sent that notice to each body

or person that had appeared before the public consultation hearings on the private sector green paper the government had circulated.

That means each and every group or individual that knew the government, under other legislation than Bill 105, intended to propose legislation that would provide equal pay for work of equal value in what the government calls the private sector, which we call most of the public sector plus the private sector, was notified clearly that we intended to deal with Bill 105.

Any of those groups that had come forward to express positions, suggestions, concerns or whatever during the public consultation process had the opportunity and a direct invitation from the standing committee on administration of justice, dealing with Bill 105, to respond. Each was asked whether it wanted to make public presentations to us. The groups were also asked whether they would like to submit written information in addition to the presentations they had made through the public consultation process--the business group which toured Ontario and heard public submissions concerning equal pay in what the government calls the private sector.

Many of those groups came forward. We cannot say each and every body and organization in Ontario received a direct invitation, but there has been extensive indication, first, that the government legislation tabled in February was legislation which the opposition parties felt was too narrow in scope. People have had several months in which to consider whether it was important to make a submission to this committee, whether directly in person, with a delegation or in writing.

I cannot understand the purpose of the motion. I hate to satisfy Mr. Polsinelli by somehow being put in the position where Mr. Polsinelli will go out waving notices, requests and so on and say his rights and the rights of 6,000 agencies, boards and commissions around this province are being trampled on. However, I have to ask myself if this government wants equal pay.

What we now have had proposed to us is that we go through yet another round of hearings, delegations, submissions and so on. What purpose does that serve when our goal is to provide legislation that will protect women in the sense that they will get equal pay for work of equal value in Ontario? Given the government's oft-repeated public commitment to provide legislation, either through Bill 105 or Bill 105 and another bill, we have assumed, perhaps with less and less conviction, that this government intends to bring forward legislation--we have heard November, we have heard this sitting and we have heard this fall--that will cover precisely those groups the amendment addresses: the full public sector. I do not know what the purpose of all this is. Is it simply to delay equal pay for work of equal value in Ontario?

It may be funny to Mr. Polsinelli to read out whatever corporation he just read out, as one of the agencies we should hear from, but the fact is that every bit of delay means another day when women do not get equal pay in this province, and he knows that.

Mr. Polsinelli: Yes, I agree with you 100 per cent.

Ms. Gigantes: Then do not fool around.

Mr. Chairman: Mr. Polsinelli, can I ask you and Ms. Gigantes to deal with the question before us, which is a request on your part for unanimous consent of the committee to deal with the issue of opening up the hearings and the delegations before the committee?



Mr. Polsinelli: I want to respond to Ms. Gigantes.

Mr. Chairman: I would like Ms. Gigantes--

Mr. Charlton: The request is for unanimous consent to deal with that motion.

Mr. Chairman: That is exactly what it is. I want to place that question. I will allow for limited comment from Mr. Callahan and then I will place the motion.

Mr. Callahan: Very quickly--

Mr. Gillies: With respect, Mr. Chairman, I was on the list before Mr. Callahan.

Mr. Chairman: I am sorry. I did not see you on the list.

Mr. Charlton: There is no unanimous consent to place the motion now.

Mr. Callahan: I will be very quick, Mr. Gillies.

Mr. Chairman: We will deal with unanimous consent.

Mr. Callahan: Very quickly, Mr. Chairman. I sat on the subcommittee that very carefully drafted the notice to go in the newspapers. I have not seen it for a while, but when we drafted it, we took great pains to make certain it dealt with the issue the government had originally put forward, the narrow public sector. I want to see that notice of advertisement, because if that is correct--

Mr. Polsinelli: It is correct.

Mr. Callahan: Is it? Perhaps I will ask the chairman. You were on the subcommittee, as were Ms. Gigantes, myself and I cannot remember who else. If you look at that notice--and I believe the clerk will attest to this, as well--we went through mental gyrations to make certain the public was being clearly advised that it was the limited public sector. If I am correct in that respect, Mr. Polsinelli's request for unanimous consent at this point is very well founded in light of the fact that those people who received the advertisement were misled.

Ms. Gigantes: The bells have rung.

Mr. Chairman: Mr. Gillies, the bells have rung. I want to deal with the question of unanimous consent, if I might, with the committee's agreement.

Ms. Gigantes: Why should we deal with that?

Mr. Charlton: Unanimous consent has been denied.

Ms. Gigantes: We were not allowed to get to a vote on a section we discussed for two days. Why should they get to deal now with this request? I move we adjourn.

Mr. Chairman: Ms. Gigantes moves that we adjourn. A motion to adjourn takes precedence.

Mr. Polsinelli: On a point of order, Mr. Chairman.

Mr. Gillies: Can you entertain a point of order after a motion to adjourn? Enough rules have been broken here this afternoon.

Ms. Gigantes: No.

Mr. Chairman: I believe the motion to adjourn takes precedence. At this point, we must--

Mr. Gillies: I have a point regarding scheduling, which I believe is rather important. Members of the committee will understand, as I do, that we will be here again next Monday to deal with the bill.

Mr. Chairman: We can adjourn and discuss informally, if you wish, the matter of scheduling.

Mr. Polsinelli: A motion to adjourn is not debatable.

Mr. Chairman: I wanted to deal with that issue as well, but as you can see, in spite of warnings from the chair, the time has--

Mr. Gillies: I just want to assure you that the members of the official opposition will be here next Monday afternoon to proceed with clause-by-clause debate on the bill.

The committee adjourned at 6:01 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

MONDAY, NOVEMBER 3, 1986

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Charlton, B. A. (Hamilton Mountain NDP),

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polisinelli, C. (Yorkview L)

Ramsay, D. (Timiskaming L)

Rowe, W. E. (Simcoe Centre PC)

Substitutions:

Callahan, R. V. (Brampton L) for Mr. Ramsay

Gillies, P. A. (Brantford PC) for Mr. O'Connor

Grier, R. A. (Lakeshore NDP) for Mr. Charlton

Clerk: Mellor, L.

Staff:

Ward, B., Research Officer, Legislative Research Service

Revell, D. L., Legislative Counsel

Witness:

From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy  
Minister, Labour Policy and Programs



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, November 3, 1986

The committee met at 3:45 p.m. in room 151.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: I have some information to share with the members of the committee prior to dealing with section 2 of Bill 105.

On Friday I had a discussion with the Minister of Labour (Mr. Wrye), who is obviously in absentia for our meeting today. He indicated and reiterated to me what he said to the committee about his inability to be here either today or tomorrow as a result of the northern economic conference that has called him away. I posed a question to him about the propriety of having the parliamentary assistant, Mr. Polsinelli, sit in his place. He indicated after discussion with the Premier (Mr. Peterson) that they had made the decision that they feel the bill is important enough and sufficiently critical enough that they want to have the minister in the chair, as opposed to the parliamentary assistant. I want you to know that this is no reflection whatever on Mr. Polsinelli, who is a well-recognized and honoured member of this committee.

This brings us to the point where, as a result of the minister being unable to attend and the government's decision not to allow the parliamentary assistant to attend, the committee has a decision to make as to whether it wishes to proceed with section 2 on the basis that there will not be a government representative here to respond to any questions you have regarding this all-important section of the bill.

I pointed out to Mr. Wrye that it would not be impossible, but it would be difficult for us to proceed to the third and following sections because so much hinges on the decisions that will be made on the still-to-be-voted-on section 2. He recognizes that and apologizes for his absence. Mr. Polsinelli may be able to confirm this, but I believe he intends to be here for the Monday and Tuesday sittings of next week.

Ms. Gigantes: The House is not in session.

Mr. Gillies: The house does not sit.

Ms. Fish: There are no Monday and Tuesday sittings.

Mr. Chairman: I am sorry; you are right. It will be the following week. We will be delayed two weeks.

Mr. Polsinelli: I assure the chairman that the minister will be working on those two days.

Mr. D. R. Cooke: But not here.

Mr. Chairman: I want to pose a question to the committee. I will hear from the critics in the usual order, followed by the government, relative to this question. The issue is whether you wish to proceed with the minister absent and the fact the parliamentary assistant will not be substituting. These are the problems we have to face very quickly. I will turn to Mr. Gillies and then to Ms. Gigantes to hear their views on how they wish to proceed at this point.

Mr. Gillies: We are very concerned about the delays that are becoming very common surrounding this bill. I also spoke to the minister on Friday. I will not be critical of the minister for attending and chairing the northern conference. That is not the issue. I fully appreciate that it is very important to the northern economy. As a party, we attach a lot of importance to it and it is most appropriate the minister should be there. Let us put that issue aside for a moment.

I fail to see what the problem is in so far as the minister and the Premier are concerned in allowing the parliamentary assistant to proceed to guide us with the bill. The parliamentary assistant was here for the bulk of the hearings, which the minister was not. This is probably as close as he will get to a compliment today, but the parliamentary assistant probably knows more about the details of the legislation, the details of the presentations that were made to the committee and the details of the two opposition parties' respective amendments. I will hazard a guess that the parliamentary assistant is more familiar with all that than is the minister.

Mr. Pelsinelli: Do you think we can get that on Hansard?

Ms. Fish: It is on Hansard.

Mr. Chairman: Are you asking for a vote on that?

15:50

Mr. Gillies: No, but I fail to see why the government would not agree to allow the parliamentary assistant to carry the bill. I once had the honour to serve in the parliamentary assistant's position and many times I was given responsibility to carry legislation on behalf of the minister. It is in no way unusual for that to be the procedure.

The other concerns are that the minister knew for a period of time that this would be the item of business before the standing committee on administration of justice today and tomorrow. If the minister could not be here today and tomorrow, why were arrangements not made at the ministerial level to allow the parliamentary assistant to carry the bill this week?

Also, I fail to see why the government House leader would not have approached the other two party House leaders to see whether alternative sitting times could have been found this week to allow this committee to proceed with its business. I received the notice from the committee clerk on my desk in the Legislature today that the item of business before the justice committee this afternoon is Bill 105. If you would care to look at the order paper, that was on all of our desks and agreed to by the House leaders, it clearly indicates that the item of business before the committee today is Bill 105.



If we do not get down to this bill today--we are all aware that the House and committees will not be sitting next Monday and Tuesday because of Remembrance Day--this bill will not be proceeded with in committee for another two weeks.

Again today, the Treasurer inaccurately and unfairly characterized pay equity legislation as being held up in this committee by the opposition. Clearly, the events that we are now debating demonstrate that if anyone is holding up the debate in committee on pay equity and Bill 105, it is the government, for all of the reasons I have outlined. They failed to make the arrangements necessary so that this bill could be proceeded with.

I would urge you, Mr. Chairman, even if we have to adjourn for five or 10 minutes, to see if some arrangement can be made with the governing party so we can proceed. I might add that the first amendment we would be starting with today was debated at some length last Tuesday. The minister made a couple of comments about it. The amendment is well known to the minister, and I fail to see why, at the very least, we could not continue in today's sitting to deal with that substantive amendment.

Ms. Gigantes: I too was approached by the minister on Friday to cancel this week's sittings because he was going to be active at the conference in the Sault. I said to him, while the conference in the Sault may have been scheduled for a long time, which is the point he raised with me, it is also true that since July the government has known this legislation was going to the justice committee and that the justice committee meets on Mondays and Tuesdays.

If we go back over what we have managed to accomplish, we had about three weeks of public hearings on Bill 105. We then had a week in which, at the minister's request, we did not meet because he wished to familiarize himself with the amendments tabled by the two opposition parties. We then had another week where sessions consisted of a dry run through the bill in which we discussed not only the clauses of the bill but the amendments which each of the opposition parties intended to put. Last week we were treated to a procedural battle all Monday and on Tuesday, as the minister admitted to me on the phone, the Liberal contingent on this committee was ragging the puck.

We had a government filibuster on the first amendment, which was a joint amendment, as you will recollect, an amendment put forward by the Conservatives and amended by the NDP, which sat unvoted on all of last Tuesday's session. For the minister to start making approaches on Friday to say he would not be present this Monday and Tuesday and that we should not proceed is nonsense. There is no reason why Mr. Polsinelli cannot sit in in his stead.

Furthermore, this committee has frequently had the assistance only of parliamentary assistants when dealing with major pieces of legislation, most recently with the amendments to the Mental Health Act under Bill 7, for which Mr. Ward sat in for Mr. Elston. The parliamentary assistant provided the information we needed to deal with each clause that was under consideration and with the amendments that were being proposed.

We are trying, but we are being treated to a stall. What is the purpose of this stall? I do not understand it. We are not supposed to meet today or tomorrow. The minister presumably returns on Wednesday, but he has made no arrangements so that we can meet at any other time this week. I suppose we

could go ahead and try to do it now. I wonder how that would be greeted by the minister. Would he have some other pressing commitment that is more urgent than equal pay? Next week, as Mr. Gillies has pointed out, we are not scheduled to sit.

I suggest we proceed. Once we have made a decision on that matter, I would like us to consider a motion that would have us sit at least once next week, perhaps on Wednesday evening. We need to get this work done.

Mr. Chairman: I want both previous speakers to be aware that the chair is not going to make a decision in connection with whether we should or should not proceed, but I will accept a motion from the floor in connection with the direction you intend to go in this matter. I will do that following the speakers to the issue.

Mr. Polsinelli: There should be no misunderstanding of the government's position on pay equity. We canvassed on it in the last election; we made a commitment to the people of Ontario to introduce pay equity into both the public and the private sector. There was an item in the accord. To date, there has been no wavering of the government's position on this important issue. As a matter of fact, nine short months after we formed the government, we introduced legislation dealing with pay equity in the narrow public sector; a short 16 months later, we are awaiting the introduction of a bill in the Legislature by the Attorney General (Mr. Scott) dealing with pay equity in the broader public and the private sector.

The position that has been taken by the opposition parties is an irresponsible one. They have chosen to disregard parliamentary tradition and our standing orders. They have introduced amendments to this bill that would greatly widen its scope and increase government expenditures; at a time when the government has its own plans to introduce a bill dealing with the sectors covered in this bill. Two weeks ago, when the clause-by-clause debate was to commence in this committee, both opposition parties introduced their amendments. This is a very important bill. It has to be proceeded with in a responsible fashion. The position that has been taken by the opposition parties is irresponsible, to say the least.

Ms. Gigantes: On a point of information: The parliamentary assistant to the Minister of Labour disremembers. Three weeks ago the amendments were tabled by both opposition parties.

Mr. Polsinelli: It may have been three weeks ago, but it was the day that the clause-by-clause debate was to commence, and that was the day the amendments were tabled with this committee.

Mr. Callahan: You got them at 11:45 that morning from the Conservatives.

Mr. Chairman: The record will show it was three weeks ago, if that is a point of major contention.

Mr. Polsinelli: It is not a point of major contention. I agree it may have been three weeks ago, but it was the day this committee was to commence the clause-by-clause debate of this bill. That was the date the opposition amendments were introduced. Quite rightly, the ministry and the minister asked for an extension of the hearings and for an extension of the time that the clause-by-clause debate was to commence in order for us to examine the amendments submitted by the opposition parties.



I am not going to prolong my speech. I made ample comments last Tuesday dealing with the reasons I personally am opposed and the government is opposed to the extension of this bill to the broader public and private sectors. We feel this particular legislation is inappropriate. We have our own agenda and we will be introducing a bill dealing with the broader public and the private sectors.

16:00

The minister quite rightly indicates that this is a bill of such tremendous importance, and the amendments tabled by the opposition parties are of such a magnitude, that he and the Premier feel the minister should be here personally to guide it through committee. I concur with that opinion.

I would like to point to one of the amendments to indicate the minister's point. It is an amendment that has been placed by the Conservative party. It shows quite clearly how irresponsibly, without very much foresight or forethought, these amendments have been brought forward.

Mr. Chairman: If I may interrupt, I am leaving you a little latitude. The point under discussion is--

Mr. Polsinelli: Why we should have an adjournment.

Mr. Chairman: I am allowing for some flexibility. I did so with the other speakers as well. However, the main point under discussion is whether this committee wishes to proceed in the absence of the minister.

Mr. Polsinelli: Exactly. This is quite relevant in that the issue under discussion is whether or not the parliamentary assistant should take the stead of the minister. This simple amendment proposed by the PC Party quite clearly indicates how little thought they gave to these amendments and how very important they are in the eyes of the minister and why he would like to guide this bill through committee himself.

I refer you specifically to amendment 3b where the Conservative party, should this amendment carry, would require that any company dealing with the public sector should indicate that it is in compliance with pay equity legislation prior to its being able to do any business with the public sector.

If this amendment carries, not only will it extend this bill past the broader public sector, but to the private sector, as many thousands of corporations do business with the public sector. It is also sending out a message to the private sector, saying, "Do as I say, not as I do," because if this amendment carries, that private sector doing business with the government would be required to have in place immediately a pay equity plan and to be in compliance with pay equity legislation, whereas the government itself would have in the bill a certain period of time--

Ms. Gigantes: On a point of order, Mr. Chairman.

Mr. Polsinelli: --where the pay equity system would be phased in.

Mr. Chairman: I have to recognize a point of order.

Mr. Polsinelli: I was just completing my remarks, Mr. Chairman.

Mr. Chairman: There was a point of order as you were in midstream in your remarks. I am trying to hold you there. You still have the floor.

Ms. Gigantes: My point of order is that all this debate on the part of Mr. Polsinelli on a motion that lies way ahead of us in our work is really not to the point, which is that we are trying to decide whether to proceed today.

Interjections.

Mr. Chairman: On another point of order, Ms. Fish.

Ms. Fish: It is my understanding that this committee is duly convened to deal with Bill 105 on a clause-by-clause consideration. In the absence of any motion to adjourn or not to deal with Bill 105 in clause-by-clause debate, may I understand why this committee has not started a clause-by-clause discussion?

Mr. Chairman: You missed the early part of the chairman's opening remarks, wherein I indicated that neither the minister nor the parliamentary assistant would be representing the government at this session. As a result of that, I threw out the question to the committee that there may be some issue at hand that had to be dealt with relative to whether or not you wanted to proceed in the absence of a government representative. That is the issue on the floor at the moment. It is not a question of whether we are duly constituted--

Ms. Gigantes: What we are doing is discussing it without a motion.

Ms. Fish: That is right.

Ms. Gigantes: Would it help you if I put it in a motion?

Mr. Chairman: Yes. You may do that.

Ms. Fish: That is my problem. We are constituted to deal with clause-by-clause consideration. In the absence of so doing, surely at the very least there should be a motion on the floor. If there is a question about our proceeding clause by clause, that motion can come only from our Liberal colleagues, who apparently are quite determined to delay this consideration. I suggest that the discussion is out of order until there is a motion on the floor.

Mr. Callahan: On a point of order, Mr. Chairman.

Mr. Chairman: I have an indication of a motion being presented by Ms. Gigantes. I will take your point of order.

Mr. Callahan: The point of order is that, fair chairman that you are, you have allowed two critics to speak on this matter before Ms. Fish even arrived, and now Ms. Fish would like to cut us off, even though--

Ms. Fish: I was in attendance for the full discussion, Mr. Callahan. I want to deal with this obnoxious filibuster and this appalling delay on the part of the Liberal members who are here.

Mr. Callahan: --the two opposition parties have had an opportunity to discuss it. I say that is contrary to the rules of natural justice.



Ms. Fish: This committee was called to deal with clause-by-clause discussion of Bill 105. The chair can entertain any motion whatsoever not to deal with it clause by clause. There is no such motion before us. The chair invited the committee to consider whether there would be a motion not to deal with it by virtue of advising us of the minister's incredible decision not only not to attend, but also not to provide confidence in his parliamentary assistant. Still, no motion has been forthcoming. I want to suggest that the entire discussion is out of order in the absence of that motion and that--

Mr. Callahan: Do you hear that, Mr. Gillies? Your discussion is out of order. Ms. Gigantes, your discussion is out of order as well.

Mr. Chairman: We will move to a motion at this point. The chair recognizes the argument put forward by Ms. Fish as a reasonably valid one. I will move to Ms. Gigantes now, who is going to propose a motion.

Ms. Gigantes: I move we proceed with the clause-by-clause discussion of Bill 105.

Interjections.

Mr. Chairman: I am going to recognize the motion. I will come back to you. You still have the floor.

Ms. Gigantes: We should proceed with our duly ordered business, which is clause-by-clause discussion of Bill 105.

Mr. Chairman: Ms. Gigantes moves to proceed with clause-by-clause discussion of Bill 105.

Mr. Polsinelli now has the floor.

Mr. Polsinelli: On a point of order, Mr. Chairman: Could I ask you to revisit your ruling--

Ms. Fish: Are you challenging the ruling of the chair?

Mr. Chairman: I did not make a ruling. I simply asked for a motion. I invited a motion some time ago. I allowed debate prior to the motion.

Mr. Polsinelli: I ask you to revisit your previous statement in determining whether that motion is in order at this time because I do have the floor.

Mr. Chairman: I am ruling that the motion was in order.

Mr. Polsinelli: I was prepared to make a motion prior to Ms. Gigantes's motion--

Ms. Gigantes: You are supposed to make a motion and then speak to it.

Mr. Polsinelli: --and my motion would now be contrary to Ms. Gigantes's motion.

Mr. Chairman: You can vote against her motion. It is very simple. That is the way it is normally done. You can argue against her motion, you can debate the intent of her motion and you can try to persuade your colleagues here assembled of the clearness of your argument and what you are going to propose.

Mr. Polsinelli: On a point of order--

Mr. Chairman: Mr. Polsinelli, have you, in fact, given up the floor? You have two colleagues here who wish to speak; Mr. Callahan and Mr. Cooke, in that order.

Mr. D. R. Cooke: I have a point of order.

Mr. Chairman: We have a lot of points of order and I would really like to get on with Bill 105 if that is the intent of the committee. Mr. Cooke has a point of order.

Mr. D. R. Cooke: My point of order is that, as I understand it, you invited discussion on this topic.

Mr. Chairman: Yes.

Mr. D. R. Cooke: You recognized Mr. Gillies. You recognized Ms. Gigantes and then you recognized Mr. Polsinelli.

Mr. Chairman: Yes.

Mr. D. R. Cooke: You invited a motion. Ms. Gigantes had the opportunity to raise her motion when she had the floor. She did not use her opportunity. Mr. Polsinelli was in the midst of a statement when, on a point of order, you permitted Ms. Gigantes to present a motion. I would suggest that is not in accordance with the rules and that Mr. Polsinelli, who is now indicating he wishes to raise a motion, should have the right to do that when he has the floor. Ms. Gigantes has abandoned the floor.

Mr. Chairman: The chairman has already ruled that Ms. Gigantes's motion is in order. I have given the floor back to Mr. Polsinelli. He can at this time debate whatever position he wants to take on the main motion as placed by Ms. Gigantes. Mr. Polsinelli, you have the floor, followed by Mr. Callahan and then Mr. Cooke.

Mr. Polsinelli: Before I was interrupted by the 13 points of order, I think I was talking about the Conservative amendment to section 3b which would have extended this legislation to the private sector and to the thousands of companies which deal with the government and the public sector.

I was indicating at the time how inappropriate this amendment is in that it places a more stringent obligation on the contractor doing business with the government than it places on the government. The contractor would be required, upon royal assent of this bill, to be in compliance with pay equity legislation immediately, whereas the government would have a certain phase-in time.

I reiterate that this government has a particular agenda as to how to deal with pay equity. We would like this bill to proceed in the narrow public sector. Within a very brief time, we will be introducing a bill dealing with the broad public sector and the private sector. The minister has indicated his position quite clearly: that the amendment to this bill and the amendments which have been proposed by the opposition parties are of such magnitude and importance he would like to be here personally to make those comments and observations on the amendments. Therefore, I hasten to add, I request that this committee adjourn these proceedings until the minister can be present.



The minister made it quite clear at the previous sitting of this committee last week that he would not be here this week and he requested that the committee adjourn this sitting until he could be here. I would request that the committee conform to the normal government practice and the normal parliamentary practice of not proceeding clause by clause when a government representative could not be in the chair.

16:10

Mr. Callahan: I share many of Mr. Polsinelli's concerns but I would like to draw to the committee's attention something that I think is relevant to this entire issue.

I was on the subcommittee along with you, Mr. Chairman, Ms. Gigantes--and I am not sure who the fourth person was--when we formulated the advertisement, the notice that was to go out to the public. I recall very vividly there was a good deal of concern that the wording of the advertisement--I have a copy of it before me--would be limited to the narrow public sector.

I reviewed the people who have appeared before this committee. There are some who are within the narrow public sector but there were a good number of them who were not, who were not there, who did not come, and quite understandably so, because the wording of the notice was very limited.

In view of that fact, and since the official opposition and the third party intended to expand the bill, as they are doing or intend to do by using their new accord to pass section 2, one would have expected that they would have revealed that to all and sundry as a matter of fairness.

You can laugh, Ms. Gigantes, but you are always crying about fairness and this is a matter of fairness. One would have expected that they would have spoken up and said, "We want to go to the broad public sector in fairness to the people who are going to come forward as the proponents and witnesses on the issue of this most important bill."

Mr. Chairman: Excuse me, Mr. Callahan, Mr. Gillies has a point of order.

Mr. Gillies: Just to correct Mr. Callahan's misimpression, I announced the position of the Conservative Party on this legislation in detail in April. If the subcommittee did not take that into account in striking the formation of the delegations, then I would suggest the shortcoming was theirs and not mine.

I am pleased to say the position I announced in April, which is reflected in these amendments, was the subject of a number of front-page articles.

Mr. Callahan: I am not sure that is a point of order.

Mr. Chairman: I do not know if it is a point of order.

Mr. Callahan: It is a point of view.

Mr. Polsinelli: On a further point of order, I would like to point out that the opposition members comprised the majority of the subcommittee dealing with that issue.

Mr. Callahan: I was going to get to that.

Mr. Chairman: Having heard that, we will go back to Mr. Callahan, who has the floor.

Mr. Callahan: Thank you, Mr. Chairman, for your abundance of fairness.

Perhaps Mr. Gillies was at the forefront of his caucus and may very well have made that statement. But the opposition parties who were there--members of the Conservative Party and the New Democratic Party--were quite aware of the fact that we were all very clear that we wanted to make certain the public was fully aware that these committee hearings at this time would be on Bill 105 as proposed by the government, and would include the narrow public sector.

In view of that, and in view of the fact that it was a unanimous decision by that very fair subcommittee, the notice did go out as follows--and we struggled over this wording, as you know, Mr. Chairman:

"It should be noted that Bill 105 provides for pay equity for a limited number of female employees in the Ontario public service only and does not provide for the extension of the pay equity principle to the private sector." Anyone reading that in the newspaper--perhaps it is evidenced by the fact that the people who did come before us in the committee hearings were not fully representative of those in the broad public sector.

That is why my colleague's suggestion about section 3b is so important, because if section 3b passes, there is not only a spillover into the broader public sector but also into the private sector.

I, for one, in my own municipality and in my own riding, would be very embarrassed to go back and tell my ratepayers and my council that the garbage contract they had entered into for, say, three years on a contract basis would now have to be upped by \$100,000 because of section 3b.

I would hate to have to tell my hospital board it could not have its sheets and pillowcases and the rest done unless the hospital or the cleaning people are prepared to produce a pay-equity scheme immediately.

I would hate to go back to the contracting out we do for animal control services and tell the public we can no longer have animal control unless we are prepared to have them enter into an immediate pay equity scheme.

I would hate to go back to any number of people in my local municipality and in my riding and have to tell them, "I am sorry; we have to get rid of these people."

So I suggest that if we are going to move on anything today, perhaps--and it has been done; there is precedent for voting on matters out of order--we should find out what the fate of section 3b is now. On a number of occasions Ms. Gigantes has said: "Oh no, we will not look at that. We will look at section 2."

It sounds as though she is going to vote against section 3b. If so, that would eliminate a lot of the concerns I have and would perhaps place the matter in perspective.

If section 3b passes, I would suggest that is the end of it. If we



continue with it, what we have done is what I have just indicated. This applies to my municipality and to every one of our municipalities now so ably represented by members of the Legislature. If we pass it, we scupper all those individual contracted services that are available to the public.

I would also have some difficulty in explaining to my constituents, who pay school taxes and municipal taxes, that if section 3b passes it may be necessary for the municipality to deficit-finance--otherwise the service would not be available--and not only to collect the funds for that additional service now but also to collect the same amount next year.

It is clear that this government has indicated, and is on the record on numerous occasions--I suppose it is the opposition that is just not prepared to wait. They wish to flex their muscles. I am sure they flex them for political reasons to try to bring this into the broad public sector.

If they think they are doing anything for their constituents, they are mistaken. I would ask that we do one of two things: either we deal with the question of adjourning it until the minister can be here, which is preferable, or, alternatively, we take the vote out of order and go with section 3b first to find out what the state of the nation is on that, because that has a very significant impact on this entire proceeding.

I would suggest we have already trampled the rules of parliament. The rules do not seem to apply any more even though you gave a very erudite decision in terms of how we should proceed. It may very well be that the opposition parties are trying to set the agenda--set the budgeting of this government--and I suggest they are doing it to the detriment of the people we all wish to serve, in terms of getting fairness into the question of pay for women. I wonder if they really have given that a lot of thought or is it more important to score points that may be available to them in the next election rather than look after the legitimate and fair purposes of their constituents.

Mr. Chairman: When is that, by the way?

Mr. Callahan: Probably tomorrow. I really find it difficult because I think all of us should be treating this issue in a very sensitive fashion, recognizing that the time has come--the time is well overdue--for women to be treated fairly and equally in this province. For the benefit of scoring some Brownie points, Ms. Gigantes, it seems to me that moving in this aspect is just smoke and mirrors for all those women out there who have been waiting for this remedy and perhaps are going to have it delayed longer because of the wrangles that go on with the question of whether the rules of parliament have been trampled on.

I suggest a precedent such as this would allow your opposition party to set the entire agenda of the government, and that is not in line with what goes on in a parliamentary form of government.

You are playing smoke and mirrors with all those women out there and you are jeopardizing and delaying the whole implementation of this. The government wants to get on with it. Those are my submissions.

16:20

Mr. D. R. Cooke: As I understand it, this vote is a historical precedent in Ontario.

Ms. Fish: Give me a break.

Mr. D. R. Cooke: We are dealing for the first time with the concept of the Legislature telling the administration, over the opposition of the administration, how it is to spend money. That is a very serious break in precedent.

With the proposal that hearings occur with Bill 26 in the finance and economic affairs committee, I can see we are going to be dealing shortly with the proposal that the Legislature tell the administration how it can raise taxes. In essence, I expect this committee will say, "We should be spending more money" and the other committee will say, "We should be raising less in taxes." The administration is being given a basic problem.

The issue we are facing this afternoon is, can we do it without any representative of the administration here? Mr. Polsinelli is not the representative of the administration. He is not a member of the administration. As competent as he is--

Ms. Fish: He is getting paid as a parliamentary assistant and the parliamentary assistant is to carry legislation when the minister is absent.

Mr. D. R. Cooke: The parliamentary assistant is not a member of the administration and does not have the responsibilities of the administration. There is no question that he is carrying out the job he is doing very competently but that is not the question here.

It is extremely important, if we are going to be irresponsible, that at least we have a member of the administration here to listen to why we are doing it and to counter our debating points. I would be prepared to meet at another time later this week, some time in the evening, any evening or any time over the weekend that might strike the fancy of the opposition. We can meet when it is convenient to the minister as well.

This matter has already been brought up with the House leaders and the opposition refuses to sit nights in committee. I do not understand the insistence on going ahead on a tangent like this without even having the administration here to listen to what is being said.

It is particularly unfortunate that the motion has come from Ms. Gigantes, who informed us before the meeting began today that her birth, of which we are celebrating the anniversary this week, was heralded as a peaceful gesture, as a coming together of the two great religions in this country. I am sorry it has come to this.

Ms. Gigantes: That is pretty low.

Ms. Fish: May I ask, Mr. Chairman, what motion you recognize as being on the floor?

Mr. Chairman: Ms. Gigantes's motion, which is the only motion I have.

Ms. Fish: That is the motion to proceed clause by clause on Bill 105; I move the previous question.

Mr. Chairman: We now have a motion to move the previous question. It is not debatable. I will call the motion.



I remind the committee that in voting for the motion, you will be voting in favour of carrying on with our business in the absence of the minister. A vote in opposition means you wish to adjourn or that would be the next motion I would expect to come forward.

Mr. Polsinelli: Can I have a point of clarification, Mr. Chairman?

Mr. Chairman: I thought I just clarified it.

Mr. Polsinelli: How about amendments to the motion?

Mr. Chairman: An amendment to the motion is in order.

Ms. Hart: Can I have an amendment?

Mr. Chairman: I am sorry, we have a nondebatable motion.

Ms. Gigantes: You betcha.

Mr. Chairman: I correct myself.

Mr. D.-R. Cooke: Do we not have other business we could be dealing with today?

Ms. Gigantes: Sure. Invent some. Anything.

Mr. D.-R. Cooke: Is there not anything else?

Ms. Fish: I moved the previous question, which is nondebatable. Will you please call for the vote?

Mr. Chairman: Yes, I am ready to put it, but I have had a point of information and points of order--

Ms. Gigantes: That is irrelevant.

Mr. Chairman: I will call the motion. If the intent of it is clear in your mind, let us proceed with it. All in favour of the motion--

Ms. Hart: Mr. Chairman, before you do that, it is not clear. You reversed it in your explanation.

Mr. Chairman: No, I did not reverse it.

Ms. Hart: Perhaps my ears reversed it.

Mr. Chairman: If you vote in favour of Ms. Gigantes's motion, we proceed. If you vote in opposition to Ms. Gigantes's motion, then I would presume another motion would be brought forward indicating that we would either adjourn at this time or that we would carry on with business other than some of the business that is before us, namely, section 2.

Mr. Callahan: I am on the edge of my chair for the result of this vote.

Mr. Chairman: All in favour of Ms. Gigantes's motion? Opposed?

Motion agreed to.

Mr. Chairman: We are at section 2, and we have had considerable debate on it relative to some of the amendments expanding the scope of the bill.

Mr. Callahan: I move that we vote on section 3b first.

Mr. Gillies: Our party would prefer to proceed with the amendments in the same order we did in the dry run and continue as we were.

Mr. Callahan: Just a second. That is a motion.

Mr. Chairman: I am accepting it as such.

Mr. Callahan: Everyone is entitled to speak on that motion--

Mr. Gillies: I just spoke.

Mr. Callahan: All right, but you do not just tell the chairman this is what you want to do and we get on with it.

Ms. Gigantes: There is a motion on the floor.

Mr. Callahan: The vote may be doctored here, baby, and maybe you are going to vote with the opposition in opposing us, but we do not get into that nonsense.

Mr. Gillies: I was trying to get you off the hook, Mr. Callahan. Every time you open your mouth, you display your ignorance.

Mr. Callahan: Thank you very much. That is a very fine comment by you, Mr. Gillies.

Mr. Gillies: If it helps you out, why do you not just go ahead?

Ms. Gigantes: Mr. Chairman, we have an amendment on the floor.

Mr. Chairman: Could I call for order, please? I called for section 2, which was the section under debate. The motion that was put was to leave section 2 and go on to section 3.

Ms. Gigantes: There is an amendment to section 2 on the floor of this committee. Mr. Gillies moved it, I amended it and our next order of business is to vote on it.

Ms. Fish: That is right.

Mr. Chairman: Could we get clarification?

Mr. Callahan: Was the motion put before?

Ms. Fish: There is a motion on the floor.

Mr. Chairman: There may well be a motion that was put at the last meeting; if there was, I have forgotten about it.

Mr. Callahan: I have as well.

Ms. Gigantes: That is our amendment.



Mr. Chairman: There are members of the committee in attendance today who were not here at the last meeting. Mr. Gillies, would you like to speak briefly to your amendment to the section?

Ms. Gigantes: Who? Who was not here, Mr. Chairman?

Mr. Chairman: Mr. Partington was not here, for one.

Ms. Gigantes: I think Mr. Partington knows the nature of the amendment, because his colleague put it.

Mr. Chairman: If you are all satisfied that you know what you are voting on, do you want to proceed with the vote?

Ms. Gigantes: Yes.

Mr. D. R. Cooke: Mr. Gillies just indicated that you yourself did not understand the nature of the Conservative amendment.

Mr. Chairman: No, I understand it very clearly. I do not think Ms. Gigantes was implying that; if she was, I would be quite surprised.

Mr. Gillies: Perhaps a fair way to address this is to ask if any members of the committee who were not present last week have any questions about the amendment.

Mr. Chairman: All right. If there are no members who wish to ask any questions with respect to the amendment, I will call for the amendment first, followed by the main motion.

Ms. Gigantes: The subamendment first.

Mr. Polsinelli: I thought it was a friendly amendment.

Interjections: It was a friendly amendment.

Interjections.

Mr. Chairman: There is an amendment and a main motion. I do not believe there is a subamendment. It was a friendly amendment, as you will recall.

All in favour of the amendment to the motion? Opposed? Carried.

Ms. Gigantes: Could we have the vote recorded?

Mr. D. R. Cooke: Could we have the amendment read to us?

Mr. Chairman: I already made it very clear. Mr. Gillies asked whether there were any questions about the amendment. I tried to proceed slowly so that every member, particularly Mr. Partington, with due respect, who was not here, understood the amendment. He said he did. You were here; I assumed you knew what the amendment was. The amendment calls for Ms. Gigantes's package, the definitive package which specifically outlines the increase in the scope of the bill, to be included in the main body of the motion, which is friendly to Mr. Gillies's motion. That was the amendment.

Ms. Gigantes: And it has been passed.

Mr. Chairman: And it has been passed.

Ms. Gigantes: On a recorded vote, I hope?

16:30

Mr. Chairman: I am going to have the clerk record the vote now.

Ayes

Fish, Gigantes, Gillies, Grier, Partington, Rowe.

Ayes

Callahan, Cooke, D. R., Hart, Polsinelli.

Ayes 6; nays 4.

Mr. Chairman: We will now deal with the main motion, as amended. This will be the preamble to the definitive part of the bill, as proposed by Mr. Gillies. Do you wish to have Mr. Gillies read the main motion? It is very brief.

Mr. Callahan: Let us not waste time. We know what the vote is going to be.

Interjection: Same vote.

Mr. Chairman: Same vote? Agreed? Same vote: six to four.

Mr. Polsinelli: At this point I would like to introduce a motion. I know we went through quite an extensive discussion as to whether the committee should adjourn. The committee is aware that at the last session we had extensive discussion regarding section 2 and the expansion of the section to the broader public sector and the private sector.

Each member of this committee was able to place his comments on the record, and the minister was present during the debate to hear the full content of the debate. Unfortunately, he did not have the opportunity to make his comments known, but that is the way the cookie crumbles.

At this point I would like to request that the committee adjourn until the minister can be present. I say that because the minister has expressed to me his sincere desire to be here and to pilot the balance of these amendments through the committee process.

I appreciate that the committee has already considered part of this question earlier in determining whether we should continue with the committee business and doing the clause-by-clause. I appreciate also that Ms. Gigantes's motion carried.

However, I ask at this point that the committee consider the minister's request in good faith. Given that the main thrust of his bill has been amended to cover the broader public sector and the private sector, I ask the committee's consideration of my motion to adjourn until the minister can be present.

Mr. Chairman: A motion to adjourn is not debatable. I recognize Ms. Gigantes had her hand up, but I cannot acknowledge it at this point. I will call the vote to adjourn.



Ms. Gigantes: Are we going to do this after every clause?

Mr. Polsinelli: No. We are not going to do this after every clause. But if the opposition critics wish to comment on it, I would be prepared to give this as an intent to place a motion and then place my motion later or at least give unanimous consent if they would like to debate it.

I know we will not have long. As a matter of fact, I have placed my motion and I am prepared to let it sit as a motion or as the committee would like to deal with it. I do not want to waste a lot of time on it. I am just putting it forward for the committee's and the critics' consideration, and I do it because the minister has expressed to me his sincere desire to be here and participate in this process.

Mr. Chairman: Having heard that, I am going to have to rule in what I think will be a democratically acceptable fashion. I will rule it as a proposed motion to adjourn, and I will recognize one speaker from each party on the issue, starting with Ms. Gigantes.

Ms. Gigantes: I accept Mr. Polsinelli's word that if we proceed, it is not the intention of the Liberal Party to move adjournment after every clause. I accept his word on that. I do not, though, accept his notion that, having just voted to proceed clause by clause, we should now turn around and reverse that decision.

If Mr. Polsinelli and his Liberal colleagues have been accurately reflecting one of the major causes of their concern and that of the government to be the proposed amendment 3b, we might find that the mover of the motion would be willing to consider standing down that particular clause until the minister were here. I wonder whether that might be acceptable to Mr. Polsinelli.

Mr. Polsinelli: In response to Ms. Gigantes's question, the proposed amendment 3b was but one example of some of the difficulties that we in the ministry see as problems in this bill--

Ms. Gigantes: So the answer is no.

Mr. Polsinelli: --and the amendments to this bill; so, quite frankly, the answer is no. A lot of that amendment is indicative of some of the problems these amendments can cause. The minister feels he would like to be here personally to deal with each one of these amendments and point out the difficulties.

Ms. Gigantes: When the Liberals kept talking about 3b ad infinitum, I had thought that was a major concern of theirs; so I thought if we stood down 3b, it might remove a major concern. But it seems to be a blanket concern, which we have heard expressed over many sessions and many hours, and I think we just have to say we are going to proceed.

Mr. Gillies: I do not want to be unreasonable. I say to the parliamentary assistant, we are not here to play games; we are here to deal with clause-by-clause of Bill 105. We just successfully dealt with a clause of the bill, which I point out to our Liberal colleagues shows that it can be done and that it really does not need to be that painful.

I say again, as I said at the outset, I appreciate that the minister had an important obligation elsewhere that prevented him from being here at the

committee. Through two days of procedural wrangles on this matter, you will note that I have not and I will not be critical of the minister on that count. I will be critical of the government for not proceeding with a well-established parliamentary precedent and a well-established procedure around here, which is for the parliamentary assistant to carry on in the minister's absence. I had to do it when I was a parliamentary assistant; Ms. Fish had to do it when she was a parliamentary assistant; you are paid \$7,500 a year to do it, and it is the way it has always been done around here.

Let me put a suggestion to Mr. Polsinelli. He has not been designated by the government to sit next to the chairman and carry the bill today. I understand that. He cannot, on his own volition, pop up there and start carrying the bill. I understand that. If Mr. Polsinelli will give his word to the committee, on the record, that he will get the agreement of the government that he, as parliamentary assistant, can proceed with the bill tomorrow, our party will agree not to proceed this afternoon. We would agree, because the minister is not here, nor has he designated his parliamentary assistant to carry the bill.

However, let us keep in mind, as we all know, once Mr. Polsinelli puts the motion, it is not debatable. Therefore, I caution Mr. Polsinelli that if we do not get this assurance, which means Bill 105 will not be proceeded with this week, nor will it be proceeded with next week--if you put the motion without the assurance we are looking for, we will vote against your motion. If you will tell us here and now, or even if you wish to check with the Premier's office first and get back to us in a few minutes, that we can be here tomorrow to proceed with the business that is before this committee, then we will give you the agreement you seek.

Mr. Polsinelli: It is not my lack of desire to sit as the parliamentary assistant and pilot this bill through committee, but rather the fervent desire on the part of the minister to participate in this very important process, that has prompted me to make that motion. However, I will give Mr. Gillies the assurance that I will do my utmost to work with our House leader to schedule as many additional sittings of this committee as are required to ensure prompt dealing with this bill.

I caution, though, that the minister wants to participate in the process. If we can get the opposition critics together as a subcommittee and discuss when we can proceed, at a time that is convenient to both the minister and the opposition parties, I am sure most of the opposition concerns can be allayed.

The main thrust of my motion is to have the minister present during the clause-by-clause. That does not mean we have to wait for two weeks to sit again. It does not mean we cannot sit on Wednesday or Thursday or establish some evening sittings. Those are matters that we, as intelligent human beings, can sit down and work around our schedules and arrange additional meeting times so we can deal with this bill.

16:40

I say again, it is the minister's fervent desire to sit and participate in this process. I ask the committee to respect the minister's wishes in that regard. I will do my utmost, as a member of this committee and as the parliamentary assistant, to work with the opposition critics, the minister and the government House leader to ensure we have additional sitting times if they can be accommodated in everyone's schedule.



Mr. Chairman: Before you move a motion to adjourn, the chair has one small piece of business that has to be tidied up. We had an amendment plus a motion. I now need a motion to approve section 2, as amended. Would you agree unanimously to the same vote, which is six to four?

Motion agreed to.

Mr. Polsinelli: All parties have had an opportunity to express their wishes on this, and I so place my motion.

Mr. Chairman: A motion to adjourn is not debatable--

Mr. Polsinelli: It is a motion to adjourn--not an automatic motion to adjourn; I want to phrase it in such a way that we will adjourn to a time when the minister can be present or to a suitable time--

Ms. Gigantes: Oh, come on.

Mr. Polsinelli: I do not know if I am explaining myself clearly--not necessarily the next sitting of the committee, but perhaps prior to next week, until another time when we can accommodate our schedule so we can sit again.

Ms. Gigantes: Surely that becomes debatable.

Mr. Chairman: It is. The moment you suddenly start to amend the motion to adjourn, it becomes debatable.

Mr. Polsinelli: I only do that with the intent of having the committee not come back again tomorrow when the minister cannot be here. If we can work out something with the House leader, perhaps we can come back on Wednesday or Thursday.

Ms. Gigantes: You have had a whole week to do this.

Mr. Chairman: Unless you direct me otherwise, I am going to accept your motion as a motion to adjourn. I have allowed you to speak to the motion, and you have suggested other alternatives that may take place as a result of it; but the motion to adjourn is the one I will have to accept.

Mr. Gillies: On a point of order, Mr. Chairman: Perhaps you could clarify this for me. If you accept a straight motion to adjourn, then the committee sits again tomorrow. Is that correct?

Mr. Chairman: That is right. It is only for the balance of our session today.

Mr. Polsinelli: My intent is not to go through this wrangle again tomorrow, but I would be prepared to start dealing with clause-by-clause Wednesday if the minister can be present.

Ms. Gigantes: On a point of order, Mr. Chairman: We have now had debate all the way around the block by Mr. Polsinelli on his nondebatable motion. If he is allowed to debate it, why can we not?

Mr. Chairman: He knows the restriction on that, and I am going to call the motion now. The motion is to adjourn--

Mr. Polsinelli: Until Wednesday at least.

Ms. Fish: Then it becomes debatable. I want to debate the motion.

Mr. Gillies: That qualifies it.

Ms. Fish: I want to speak to the motion.

Mr. Chairman: Mr. Polsinelli, you have placed me in an extremely awkward position by suggesting a number of things relative to your motion to adjourn. As a point of clarification, the intent of your motion to adjourn would be to complete our discussions if that motion carries, but we would be back here tomorrow at the usual time.

Mr. Polsinelli: That is not my intent.

Mr. Chairman: Then you are amending or changing your motion, so I will have to allow it to be debated.

Ms. Fish: The parliamentary assistant, who has been forbidden by his minister to carry this bill, argues that his minister is terribly interested in being here personally and is deeply committed to carrying it forward. That goodwill and good faith is something I cannot share. I cannot because I have seen no indication of it whatsoever from this minister, whose goodwill stops, in the one measure, with an obvious lack of confidence in his parliamentary assistant, and second, in his complete unwillingness to look at the schedule, his own and the committee's, and make any approaches whatsoever prior to last Friday afternoon with respect to alternative sittings.

Mr. Polsinelli: He indicated at the last committee meeting--

Mr. Chairman: Excuse me, Mr. Polsinelli. Ms. Fish has the floor. You will have an opportunity.

Ms. Fish: Listen, Mr. PA, you are paid quite a bit to be doing nothing on this bill whatsoever.

Mr. Chairman: Will you direct your comments through the chair, Ms. Fish?

Ms. Fish: Through you, Mr. Chairman, the parliamentary assistant might consider the complete remark, which is that there were no approaches whatsoever prior to last Friday afternoon--

Mr. Polsinelli: Prior to the last sitting.

Ms. Fish: --to reschedule any hearings or meetings of this committee to deal with clause-by-clause consideration of this bill.

Mr. Polsinelli: That is not true.

Ms. Fish: Under questioning from both Ms. Gigantes and my colleague Mr. Gillies, this minister has already stood in the House and threatened to withdraw this bill should anyone dare amend the scope of coverage of this piece of legislation. It is clear what is happening. The minister has no intention whatsoever to be here and deal with the bill clause by clause. There is every intention to filibuster it out, to delay it and to move in every possible way to ensure the clause-by-clause debate is not dealt with by this committee.



Mr. Callahan: On a point of privilege, Mr. Chairman: On behalf of the minister, I read into what this honourable member has said that she is calling the minister a liar.

Mr. Gillies: Since when do you represent the minister? When did you start being paid to represent him?

Mr. Callahan: I have a right to raise a point of privilege in the absence of the person being maligned.

Mr. Gillies: You cannot rise on a point of privilege on somebody else's behalf.

Ms. Fish: Are you paying him \$7,500? Is he the parliamentary assistant now?

Mr. Callahan: This member has implied the minister is lying or imputed improper motives to him.

Mr. Chairman: I did not hear it quite that way. You can infer that, but the chair will rule that it heard your point of privilege as unacceptable.

Ms. Fish: I want to be very clear. We have had one interesting scenario from Mr. Polsinelli interpreting the minister's actions and intentions. I am offering an alternate scenario with an alternate interpretation of the minister's actions and intentions. I stand by it.

It is clear to me that moving an adjournment to Wednesday is of no value whatsoever. This committee is not currently scheduled to sit on Wednesday. If the minister does not have the confidence in the parliamentary assistant to let him carry this legislation, what possible confidence should I or any of my colleagues on this committee put in the parliamentary assistant's suggestion that the minister will magically appear at this committee at some unspecified time and meeting on Wednesday to deal with the bill clause by clause?

Ms. Gigantes: Or Sunday.

Ms. Fish: Or Sunday or Friday or any of the magical meeting times Mr. Callahan or Mr. Cooke have suggested--

Mr. Callahan: I did not suggest anything.

Ms. Fish: --might possibly be of interest to the minister. The committee meets at specified times. We tried to move clause by clause last week. We have tried again to move clause by clause this week. Prior to that time, the minister and all members received the motions to be placed at this committee. They were tabled at the start of clause-by-clause consideration. That is the normal and appropriate time for motions to be tabled at committee--

Mr. Polsinelli: Which are in order.

Ms. Fish: --except for government motions when government bills come forward. Then we are overwhelmed with a stack of paper three inches thick containing government amendments because the government has such an ill-conceived bill in the first place.

Mr. Polsinelli: You received very minor amendments at least a month in advance.

Ms. Fish: Those amendments were put forward in advance.

Mr. Gillies: You are still dealing with--

Ms. Fish: No, I am dealing with this one as well which had quite a stack of government amendments that came to us. The motion to adjourn to Wednesday is a transparent motion to delay the fair progress of clause-by-clause consideration of this pay equity bill and fits no plan whatsoever save this government's plan to scuttle equal pay for work of equal value for the women in the public sector of Ontario.

Ms. Gigantes: Neither myself nor my colleague is prepared to play this little game. We want to go ahead with the bill. This has become very tiresome and very silly. The government is treating the rest of the members of this House as if we are somehow due some punishment for daring to bring forward substantive amendments. We have done them in good faith, and for this government to try to punish procedurally a large group in the Legislature is unacceptable.

Mrs. Grier: I concur with the remarks of my colleague. To adjourn for today until Wednesday is quite unacceptable, given the amount of time and consideration already given to this bill. We all have conflicts in priorities at times. If the parliamentary assistant to the minister were to advise the minister this evening that this committee intends to proceed--this committee has already voted to broaden the terms of the bill--I fail to see any reason the minister cannot be available after routine proceedings tomorrow afternoon to proceed with the committee if the bill is as important to the minister as the parliamentary assistant would have the committee believe.

16:50

Mr. Gillies: I will be very brief. We offered the government members what we thought was a reasonable compromise. We were even willing to adjourn for the rest of today if they would be here ready to work tomorrow. I know the parliamentary assistant put forward his suggestion in good faith. We cannot accept it. How do we know when the government might choose to call an additional sitting or when the minister might be available or might be willing to come down to the committee to debate the bill?

If either of the ministers I served as parliamentary assistant put me in the position you have been put in, I would be very angry. The parliamentary assistant was present and made a very good contribution to this committee for weeks during the consideration of the bill. Now the minister will not let the parliamentary assistant continue, as is more often than not the case around here, as the bill is debated. I am sorry you could not meet the compromise we have suggested, but unfortunately, we cannot support your suggestion.

Mr. Chairman: The motion is to adjourn to a specific point in time, which is why we were debating the motion. I will now call the motion placed by Mr. Polsinelli.

Motion negatived.

Mr. Chairman: We will carry on with the debate on the amendments to the bill.

Ms. Gigantes: Before we reach section 3, we have circulated an amendment to the heading of part II. I will place the amendment.



Mr. Chairman: Ms. Gigantes moves that part II of the bill be amended by striking out the heading "Pay Equity: General" and inserting in lieu thereof "Equal Pay: General."

Ms. Gigantes: I would like to speak to that.

Mr. Callahan: As a point of information, since it was used by Ms. Gigantes before: I thought we were moving on these in numerical order. It seems that there was a government-proposed amendment to subsection 1(1).

Mr. Chairman: We agreed that the definitions would be left until the end of the bill, as they normally are, so that we will know what definitions to place in the bill once we have agreed upon them. We will go back to those later.

Ms. Gigantes: The purpose of this amendment will be pretty obvious to the members of this committee who have been present through the public submissions on this bill. There was a generally expressed concern on the part of many groups representing working women--and women as a whole--in this province that this bill had attempted to achieve the goal of pay equity as if that were a substitute for equal pay for work of equal value and that it had defined the concept of pay equity in very specific, narrow terms. This was strongly felt by many groups. We will be placing further amendments which follow along the intent of this one, which is to have this first piece of legislation addressing equal pay for work of equal value actually do that.

Throughout the amendments we have circulated, we have eliminated reference to pay equity, so that we do not get caught in the very narrow concepts that the mechanisms of this bill suggest will somehow satisfy the urge for equal pay for work of equal value when what is being attempted, and would be achieved if this bill were to pass unamended, would be to satisfy a much narrower concept called pay equity. The whole bill seems designed not to produce equal pay for work of equal value in the final analysis but somehow to have the world comply with pay equity plans that are defined in a very strict fashion in the bill.

It is an important point to address right from the beginning. One of the last discussions we had in the dry run we took through Bill 105 was a discussion in which staff for the minister agreed with us that, in the final analysis, this bill did not permit a person to come forward and say, "I have not received equal pay for work of equal value," and have that complaint addressed by the equal pay commission.

It is with that object in mind, to direct our attention to equal pay for work of equal value, rather than the much narrower concept of pay equity as it is defined in this legislation, that I put forward this amendment.

Mr. Chairman: Any further comments regarding the amendment?

Mr. Gillies: I have to say I do not have particularly strong feelings one way or the other. I will just put one thought forward and I wonder whether Ms. Gigantes might be able to elaborate a bit on this.

I had heard the pay equity parlance being used more and more the last year to 18 months, I thought interchangeably with the phrase "equal pay for work of equal value."

Now your feeling is that pay equity is something specific as defined by the terms of this bill--

Ms. Gigantes: That is correct.

Mr. Gillies: --as opposed to a general term, interchangeable with equal pay, which had been my understanding.

I have no problem with your amendment. I just wanted you to confirm my understanding that the pay equity thing was around before Bill 105.

Ms. Gigantes: Yes, indeed. In fact, it has been generally used as a synonym for equal pay for work of equal value, but when we get to Bill 105, we discover that pay equity has been redefined to meet the test of the mechanisms that the government has set out in this bill, and, in the end, no person would be able, under Bill 105, to come to the equal pay commission and simply say: "I am not getting equal pay for work of equal value."

This bill does not provide for that. I think it is important that we make the concept of equal pay for work of equal value our goal, carefully delineate that and make it different from what the government refers to as pay equity within the definitions of this legislation and make it clear right from the beginning of our consideration of the clauses of the mechanisms in the bill that we are not satisfied with the narrow definition.

Mr. Polsinelli: On a point of order, Mr. Chairman: I am not quite sure, but my understanding of how committees work is that government amendments come first, then official opposition amendments and then third-party amendments. What happens--

Ms. Gigantes: In clause-by-clause.

Mr. Polsinelli: In clause-by-clause.

Mr. Chairman: You do not have any clause-by-clause; you have sections.

Mr. Polsinelli: I have some amendments from the PC Party I believe.

Mr. Chairman: This is the heading, section 2; so it is the first part we brought up. I will take the government amendments in order and give them precedence when they apply to that particular section. This does not apply to that section.

Mr. Callahan: Could I ask a question of the legislative counsel?

Mr. Chairman: Yes sir.

Mr. Callahan: Do the headings--or is it just the footnotes at the side--have any bearing on the statute? Do the headings themselves actually have any meaning or are they part of the legislation?

Mr. Revell: The Interpretation Act, as I recall, provides that side notes and headings do not form part of the act. On the other hand, recent court decisions, I think, are suggesting that headings, if not side notes, will be considered--

Mr. Callahan: As an interpretation.

Mr. Revell: Yes. By tradition in Ontario, we have moved formal amendments with respect to the headings, not with respect to the side notes.



If the thrust of the section is changed, the side notes would be changed editorially, but the headings have been changed by amendments.

Mr. Callahan: I wanted to clarify that, lest we deviate from some other form of direction that we are required to carry out by law.

Mr. Chairman: Any further comment on the third-party amendment proposed by Ms. Gigantes? If there is no further comment, I will then call the question.

All in favour of the amendment? Opposed? Carried.

Ms. Gigantes: Can we have a recorded vote on these amendments, all of them, Mr. Chairman?

Mr. Callahan: I believe the new rules call for a recorded vote being requested before the vote, but I am not going to--

Mr. Chairman: Is that correct?

17:00

Ms. Gigantes: My request is a general one.

Mr. Chairman: Do you want a recorded vote on each?

Ms. Gigantes: Yes.

Mr. Chairman: All right.

Ayes

Fish, Gigantes, Gillies, Grier, Rowe.

Nays

Callahan, Cooke, D. R., Hart, Polsinelli

Ayes 5; nays 4.

Mr. D. R. Cooke: It is getting closer.

Mr. Chairman: I have a vote. If it goes to a tie, I will be most anxious to vote at that time.

Mr. Callahan: I would be curious about how you might vote, Mr. Chairman.

Mr. Chairman: It depends on the amendment. I would not want to pre-empt all of the anxiety by telling you in advance how I might vote in these matters.

Can we proceed with the next amendment, which is a Conservative amendment, I believe? Mr. Gillies.

Mr. Chairman: Mr. Gillies moves that subsection 3(1) of Bill 105 be struck out and the following substituted therefor:

"3(1) The purpose of pay equity is to redress systemic gender discrimination in compensation for work performed by employees in the public sector."

Mr. Gillies: The intent of the amendment is twofold. In keeping with our party's policy of eliminating the gender-predominance feature of the legislation--the 60 and 70 per cent--this brings this wording into line with that intent by removing that feature of the section as originally drafted.

Further, our amendment makes reference to the public sector, as now defined by the amended section 2, as opposed to the public service of Ontario, because the legislation amended applies to the much broader group.

Mr. Chairman: The first speaker is Mr. Callahan.

Mr. Callahan: Perhaps Mr. Gillies can provide us with some information on whether this change will affect the ultimate cost and, if so, what that change would be. Do you have any research on that?

Mr. Gillies: The point here is that this purpose section affects section 2. You could say that anything that refers back to the public sector, rather than to the public service, has an implication in cost. We could have that debate now or at any other time.

As we have indicated, my understanding is that the bill, as originally drafted, had a cost implication of approximately \$88 million in its first year with subsequent increases over the period of the transition. The provincial portion of the additional cost, by extending this benefit to the broad public sector, is approximately a further \$100 million. It brings it to a total of \$188 million, rather than \$88 million, but it covers many times the number of employees.

Mr. Callahan: That was not really my question. My question was that by changing subsection 3(1), which dealt with "gender discrimination in compensation for work performed by employees employed in predominantly female groups..."

Mr. Gillies: I see what you mean.

Mr. Callahan: Do you have any information or can we get information from research on what cost, if any, that is going to add to the bill of \$188 million? That is important before we consider how we vote on your amendment.

Mr. Gillies: As you will recall, the charts--I am sorry, I am having a lot of things thrown here at the same time.

Mr. Callahan: Leave him alone, will you?

Mr. Gillies: Parenthetically, legislative counsel. In view of the last amendment we just carried, if I might deviate from your question for a second, Mr. Callahan, I would be happy to entertain a friendly amendment--I will put it myself--that the wording should now be "the purpose of equal pay," as opposed to "pay equity," which is in keeping with the last amendment of Ms. Gigantes, which was just carried. I certainly commend that change to you, if I may.

In response to your question, Mr. Callahan, you will recall the chart that was put before the committee during the hearings on Bill 105, which



actually showed that the group of women we are talking about who would be eligible for pay equity and are in that middle group, workers who are caught between the 60 per cent female predominance and the 70 per cent male predominance, was shown on the scattergraph to exist but not to be that predominant. It was by no means a majority of the workers involved. It was very much a minority.

While I cannot propose a dollar value for bringing that small group into the legislation, it would not be a great amount. As I recall it, the number of employees we were talking about was something under 20 per cent. You might, therefore, assume that if all those people were included, the additional cost might be something short of 20 per cent.

As I indicated in the broad thrust of our amendments, we believe all the female employees of the public sector should be eligible to have these inequities redressed. We would like to see everyone brought in without regard to the 60 and 70 per cent matter. It is being done in other jurisdictions. It is easily workable here.

Mr. Callahan: I am not sure I am clear on this. You are saying 20 per cent of the 660,000 people who are now--what are the numbers? It was 25,000 with the narrow public sector. What is it with the broad public sector?

Mr. Gillies: You have to be careful there. The figure of 25,000 or 26,000, depending on whose figures you have, is the number of women. That is not all the women in the public service but those considered to be potential beneficiaries of pay equity compared to--the other figure I heard you use was the 650,000--

Mr. Callahan: That is everybody.

Mr. Gillies: That is employees, male and female, in the public sector.

My understanding is that the number of female potential beneficiaries of this expanded legislation is in the range of 224,000.

Mr. Callahan: You spoke of a 20 per cent increase. I want to know to what I can apply the 20 per cent.

Mr. Gillies: Something short of 20 per cent. To get the precise numbers, I would have to get out the brief presented to the committee that demonstrated the group caught between the gender predominant groups. I do not have it in front of me, but we could provide it to you. What I can tell you, based on my recollection, is that it is a relatively small minority of female employees, but none the less a group we feel should be covered by the legislation.

Mr. Callahan: The reason I asked is, I am sure you will agree, that it is an even greater expansion of the bill as proposed. Even if we were in the narrow sector and you were moving that, it would be a further expansion of the bill.

Mr. Gillies: That is quite right. If section 2 had not been amended to include all women as opposed to those who would be included under Bill 105 as it sits here, you are quite right. That is an expanded number of beneficiaries, which presumably has a financial implication.

Mr. Callahan: It has expanded the cost.

Is there any way we can find it out for tomorrow? Is it unreasonable? I would be interested in deferring the vote until tomorrow until we have those implications. I do not know whether it would make any difference to either your party or the third party. You may wish to vote on it anyway. In a responsible fashion, we should know the additional financial impact, and if it is simply delaying it until tomorrow to get the information, unless we can get it sooner--would you be able to get it sooner?

Mr. Chairman: Perhaps the question can be answered by the staff.

Dr. McAllister: Let me make sure I understand what you are asking for. You want an estimate of what proportion of employees are in the grey area of gender predominance.

Mr. Gillies: Then Mr. Callahan is asking whether we can project the approximate added cost implications of including those who are--

Dr. McAllister: We would be able to do only a very rough estimate because we would have to build in a number of assumptions.

Mr. Callahan: That is fair enough. That would be very helpful.

Mr. Gillies: Staff are saying they can do it. For my part, I think your question is reasonable and it should be answered. Perhaps we should continue the debate, but if you wish to stand down the vote until that information is provided--

Mr. Chairman: I would like you to withdraw at this point. Stand it down and we will come back to it tomorrow.

Ms. Gigantes: I hope Mr. Gillies will not do that.

Mr. Chairman: He has not yet.

Ms. Gigantes: I hope he will not, because there are two kinds of principles at work here. One is that we have just decided from the amendment to section 2 that we are going to expand to the full public sector the groups covered by the legislation. The question now before us is the definition of pay equity implied by the mechanism of the bill.

Bill 105 proposes that when we compare a work group 60 per cent dominated by women and one 70 per cent dominated by men, then somehow we have a mechanism that is going to give us something called pay equity. In our consideration of this question, we have to ask ourselves a long-term question: do we want to stick with these abstract definitions?

When we looked in the legislation at 60 per cent compared to 70 per cent, we had presentation after presentation, including one from the chief public service union, which indicated to us that this was not a great way to be doing it; it was too arbitrary; the existence of these definitions, 60 per cent or 70 per cent predominant, invited employers to shift people from one work group to another and so on.

The question in front of us is not how much this costs compared to that. The question is, what is our object? Is it to provide equal pay for work of equal value? Our answer is yes. The second is, how do we do that? Are we going



to do it through arbitrary percentiles, through work groups that can be changed in an arbitrary fashion and changed from one year to the next? Do we want to continue working with those arbitrary definitions in that arbitrary schema? Our answer is no. It certainly was the response we had from most of the major presenters who came before us, including the Ontario Public Service Employees Union.

They put before us a very well-reasoned argument why even in the public service, where one might think this kind of mechanism would be suitable--and certainly the government started out thinking that--this is not a great way to do it. It is not going to achieve the objective we want in the way we want and in the end it is not going to leave us with legislation that will allow a man, woman or group to come forward and say, "I find I have not achieved equal pay for work of equal value and I think this legislation should provide me with that protection." As long as we have those arbitrary definitions, it is not going to happen.

I suggest to Mr. Gillies that we are not really talking about how much more money it is going to cost and so on. Frankly, if the government had been so concerned on this matter, it might have indicated cost to us a good three weeks ago when both opposition parties tabled the amendments. Because of my belief of what our object here should be, and also my belief concerning what we should be doing about it in legislative terms, the extra cost is not paramount in my mind when I look at this kind of amendment.

The other thing I would say to Mr. Gillies, with respect, is that if he looks at the motion I would put to the same section, which does very much what he is doing in his motions concerning subsections 3(1), 3(2) and the addition 3a--3b is a different kind of discussion--I think he will find the NDP motion to remove section 3 as it now stands is comparable to his 3(1). A description of the prohibitions that we want to build into the bill becomes 3a(1) under our amendment and is very comparable to 3(2) in Mr. Gillies's amendments. Our 3a(2) mentions something we feel is important; the acknowledgement that a seniority system not based on gender discrimination can be one of the elements in evaluating what constitutes equal pay for work of equal value.

His proposed amendment 3a(1) contains a concept not in ours but which we would be pleased to support: that there should be a responsibility on the part not only of the employer but also the bargaining agent, where one exists, to make sure as far as possible that discrimination on the basis of gender is eliminated.

I further point out to Mr. Gillies that in the amendment I would like to be able to put, and which in a sense is a substitute for his 3(1), the one we are addressing now, we have maintained the notion of a predominantly female job group for the purpose of making sure that when equal pay plans are being set up, that is the basis on which they are set up. Our concept of how this legislation should work is that there should be, first, equal pay plans established with the notion of female predominance in job groups as the test, in whatever work situation, of whether there was existing discrimination and a plan to deal with it.

Mr. Gillies: But not to limit the basis for comparison.

Ms. Gigantes: Exactly. Further, we suggest that once we get into the period where equal pay plans will have been filed--they may have been in operation--we would open up to both men and women to claim in a complaint that they were not receiving equal pay for work of equal value. That is a very

general complaint opportunity we would like to see established. It could be used by either men or women. This first section in which we discuss predominantly female jobs, as in my proposed section 3, is simply an indication of how we think the initial planning should begin.

The concept proposed in your 3(1), which is before us, is that we redress systemic gender discrimination. I do not see a suggestion in your package of amendments that there should be a change to definitions to define systemic gender discrimination. I do not see anything wrong with the government concept that one of the first steps you take in trying to address unequal pay is to say, if we compare this group of women with this group of men doing jobs of equal or comparable skill, effort and responsibility under similar work conditions, and a gender-neutral seniority system has some play in the rates that are established, I do not see any problem with saying we should be talking about predominantly female jobs.

Our purpose in the bill is to try, right from beginning, to address gender discrimination. I suggest that systemic gender discrimination is a looser concept--one that rolls off the parliamentary assistant's tongue at every opportunity--than the notion of work performed in predominantly female jobs.

I am not quite sure how best to deal with this. I do not want to vote against the amendment you have placed because I understand what you are after. I prefer the wording in the one we have placed, which is comparable. How can we best deal with that? Do you have any suggestions?

17:20

Mr. Callahan: I just wanted to get back; I thought my colleague was addressing the question of whether we should stand it down. Suddenly, I got lost in the dust. She was addressing the question of whether Mr. Gillies's amendment or hers was the best.

Ms. Gigantes: No, I addressed all of that.

Mr. Callahan: I would like to get the floor back, if I could, for that purpose. I think I still had the floor.

Mr. Chairman: I am sorry, I came in in midstream and did not realize you still had the floor.

Ms. Gigantes: Do not stand it down.

Mr. Callahan: My reason for asking--and I am not going to cry over spilled milk--is that the opposition parties voted for a broadening of the bill, which is obviously going to have a financial impact on the budgeting of the government.

I think it would be irresponsible for me, as a member, or for any other member of this committee, even if it is by an insignificant amount that the payout is enlarged, not to know those figures before we vote on it.

Let us face it, the eyes and ears of the world are going to be on this in terms of the private sector pay equity. If we are seen to be acting irresponsibly in not checking every bit of money that may be encountered by the government, should the private sector think that when we get to the private sector bill we are going to do the same thing?



I suggest it is incumbent upon us to examine the impact. We are only standing it down until tomorrow, Ms. Gigantes. The world is not going to come to an end if we deal with it today as opposed as tomorrow. I would urge you, in the spirit of responsibility, to see it as Mr. Gillies did, I believe, unless he has been persuaded otherwise by your eloquence. We should stand it down until tomorrow to get that information.

Mr. Gillies: I will try to make a suggestion that might accommodate everybody. I believe the information Mr. Callahan is requesting is reasonable. Dr. McAllister has indicated that an approximation of the type of data that Mr. Callahan wants can probably be provided tomorrow. That is one reason I think it is important to get you that information. The other thing is, if we tried to deal with my amendment to subsection 3(2), you could ask exactly the same question about it; it is another aspect of the same issue.

Mr. Callahan: Perhaps we could get the information on that.

Mr. Gillies: I suggest we stack our votes on section 3 and proceed to debate the implications of my subsections 3(1) and 3(2) and Ms. Gigantes's subsections 3a(1) and 3a(2) and we can have a darn good discussion for the balance of the day. The information will be available tomorrow and then we will have our votes.

Mr. Chairman: That is not in the form a motion at this point.

Mr. Gillies: That is a suggestion.

Mr. Chairman: Does that meet with the concurrence of the committee just as a principle for proceeding from this point? It would appear, from the chair's position, to be a reasonable compromise that might even be supported by all members.

Ms. Gigantes: While the question sounds reasonable, what it indicates is that we are not comprehending the intent of some of the motions. Let me explain why I say that.

Mr. Callahan says that if we are going to get away from the designation of comparison--that is, between a 60 per cent female dominated work group and a 70 per cent male dominated work group--then we are increasing the cost of the legislation.

This is true and we know that, Mr. Callahan, and we want to do it. We want to do that not because we are into some abstract game but because we think that is the right thing to do. We have heard presentation after presentation which has pointed out to us the drawbacks of not leaving the system open.

Let me explain to you how the system would work with the amendments we are proposing. In a union-organized work environment, which most of the public sector has, you would be dealing with a comparison that is worked out between management and union representatives. Okay? That is understood. That would form the basis on which an equal pay plan would be built, again by union-management consensus, I hope. If consensus is impossible to achieve, then the commission would be appealed to.

If you talk about the private sector, either within the full public sector, as this law would apply, or in another piece of legislation, supposing this is a model for the real private sector, then we are proposing, in our

amendments from the New Democratic Party side, that the employer initially do the comparison; so the employer chooses.

We are not talking about a specific amount of money in the private sector. We are talking about an employer-initiated establishment of what the comparison should be and an employer-initiated description of an equal pay plan addressed to solving the discrepancy that the employer identified. Then that employer-initiated plan would be filed with and reviewed by the commission, and it might be subject to complaints from employees. In the first instance, we would be talking about an employer-initiated comparison and plan.

I do not think this raises any horrible nightmares in the view of the private sector. What we have described in our amendments is a system in which there would be a full role for the employer first of all to identify which work groups should be compared and then what a decent equal pay plan would look like in that establishment. Got me?

Mr. Callahan: I have got that, Ms. Gigantes, but I still say that whether the net result will be that your party and the Conservatives are interested in that--

Ms. Gigantes: How do you know? How can you put a figure on it when it is supposed to be negotiated?

Mr. Callahan: I do not know. I feel you have to have at least a ball-park figure. We could sit here and say--

Ms. Gigantes: You should have a ball-park figure, if you are so worried about it.

Mr. Callahan: Just a second. I let you speak, and I would like a chance to respond.

Further amendments may come forward where, without knowing what the financial implications are, we could say, "Great, we will pass them," and then find that the act is totally unmanageable in terms of the cost or will send out a clear signal that will scare the daylights out of the private sector. We do not want to do that. I think the intent of all parties--and I say this without any partisanship--is to bring fairness to the work place.

Ms. Gigantes: That is right.

Mr. Callahan: I do not see why you are resisting this. I thought going on to section 3 was eminently fair. We are not trying to delay the bill; I am trying to get information. As a legislator, I have a responsibility to do that.

Interjection.

Mr. Callahan: The government is the one that has to provide the agenda, the budgeting and so on. You as opposition--and I understand where you are coming from--can go on cavalierly and say, "It does not matter." It does matter in terms of what we are doing with the public's tax dollars. I do not know why we cannot get consensus. Perhaps I should move a motion and let us see how the motion goes.

Ms. Gigantes: Do you believe that the elimination of comparisons in a mechanism which now reads 60 per cent female dominated compared to 70 per



cent male dominated would provide more compensation than would be fair and just? Do you think that is the case? Do you think we are opening a clause that is going to provide unfairly for women?.

Mr. Callahan: No, not at all. You are missing my point. My point is that if I am going to vote--

Ms. Gigantes: You want proportionate fairness.

17:30

Mr. Callahan: It is the democratic process. You people have outvoted us. You have already expanded it to the public sector and added a fantastic amount of funds. We are going to have to meet that at the point when the other bill comes in, sure, but I want to make certain I know what I am voting on when it comes down to the additional expense, because you have expanded it even further. If the minister were here--I cannot speak for everybody--he might well see merit in what you are proposing; but we did not choose to have the minister here, so I do not know whether he is in agreement.

I would like to have that information. I find it difficult to understand why you have this urgency to forge forward without accepting some of the reasonable approaches. I gather Mr. Gillies and his members have accepted it. We are not trying to delay, we are trying to get information, and I think we are entitled to that. Anything less is irresponsibility on my part, as a legislator. Perhaps I will move it as a motion, because we are wasting time.

Mr. Chairman: There are a couple of other speakers I want to recognize.

Mr. Callahan: I will withhold it then.

Mr. Gillies: I think I made most of the points I wanted to make, except that, looking ahead, there are many amendments I will be putting that refer back to this same issue of gender predominance. It has implications for the implementation all the way through the bill. To satisfy Mr. Callahan, we could continue with the debate on all the possible amendments to section 3, stack the votes and have them tomorrow. I suggest we proceed in that way.

In principle, what Ms. Gigantes has said is absolutely right. We know that bringing in that group in the grey area for all the good and just reasons has a financial implication. I do not know how precisely that can be estimated.

Ms. Gigantes: It has to be negotiated.

Mr. Gillies: It is very difficult, but if staff can take a crack at it, so much the better. It is information from which we can all benefit.

Mr. Chairman: Before I proceed with additional speakers, legislative counsel and I have been discussing some concerns with respect to how to proceed with the various amendments from this point. I have asked legislative counsel to make a comment to the committee, which is not to be taken as a position relative to any amendment but as a more global overview about a concern we have with respect to the future evolution of amendments generally. I ask him to make those comments now.

Mr. Callahan: That was a very tripping statement. I am not quite sure what you said, but go on.

Mr. Chairman: It will emerge clearly in the next couple of statements. If you are not careful, with the best intentions of this committee, there is the potential of doing some things that are individually contradictory. As the bill proceeds, I am asking the committee only that in the early stages of the amendments there is a necessity to look at some degree of consistency from this point on as it relates to the bill. I would like legislative counsel to speak to that.

Mr. Revell: From reading the motions, I believe it is apparent the approach of the official opposition and the approach of the third party represent slightly different approaches in philosophy. The approach of the official opposition is to allow for comparisons for underpaid male job classes as well as for underpaid female job classes. I believe the position of the NDP is consistent throughout, and it refers to predominantly female job classes.

Ms. Gigantes: If it is understood there that in the complaint mechanism, which would be the final safety net as it were, a complaint could be lodged by a male.

Mr. Revell: Within a predominantly male or female job class, I believe.

Ms. Gigantes: No. There is no such restriction in the final complaint mechanism we propose.

Mr. Revell: I would point out, though, that the purpose clause itself--and this is the point Mr. Brandt and I were discussing--is a clause that is extremely relevant to the scope the courts will have to use in interpreting the legislation at a later time. In terms of Ms. Gigantes's position, consideration does have to be given to the scope of the purpose clause, because a purpose clause can do one of two things: it can narrow a bill or it can widen a bill.

Mr. Polsinelli: Perhaps I can make a suggestion. Perhaps we can go through all the amendments, see what we can come up with and then work out a purpose clause.

Ms. Gigantes: We have done that for two days.

Mr. Chairman: With tongue in cheek. Before I proceed with Mr. Gillies, I hope that explanation was of some help to members of the committee, because when I spoke of consistency I hope, as we go through these amendments, we will keep that in mind and not do things that are contradictory in terms of the scope of the bill and the interpretations that will be placed on the bill at some later point by a body outside of these debates; namely, the courts.

Mr. Gillies: If I may comment on what legislative counsel has said, I accept the point. I want to be clear that the intention of our party is, I think, the intention of all of us. We are trying to redress inequity in pay which has arisen out of gender-based discrimination. A piece of legislation such as this can do a number of other things, but we are all out to redress inequities based on general discrimination.

As Ms. Gigantes pointed out, we do not want to preclude a male in a female-dominated area of work from having access to the legislation in terms of complaint or whatever. We can accommodate that, but the point made by legislative counsel is valid. We have to be very cautious, in terms of the definitions and in terms of the purpose, that the bill does what it is



intended to do, which is to close the gender gap between males and females, not to take the entire public sector work force and increase its pay.

Mr. Polsinelli: Mr. Gillies has just thrown a swing into this whole thing. He now indicates that the purpose of his amendments is to redress systemic gender discrimination, but his amendments will allow the comparison of male groups of jobs to other male groups of jobs. Perhaps he would like to go back, take a look at his amendments again and reword them so that he will achieve his purpose. If you look at the amendment to subsection 3(2)--

Mr. Gillies: I do not think we can do that, can we?

Mr. Polsinelli: Why not? Subsection 3(2) states, "Systemic gender discrimination shall be identified by undertaking comparisons between the representative job level in a group of jobs and a job level in other groups of jobs in terms of relative compensation and in terms of the relative value of the work performed."

If you are not identifying groups of jobs with any type of female predominance, then any group of jobs can be compared with any other group of jobs, irrespective of the number of women in that group of jobs. That is effectively a fair-wage amendment. It does not in any way address systemic gender discrimination. That is a point I brought up when we were walking through the bill and your amendments. At that time I thought you would have given it greater consideration, but apparently your party has not.

Mr. Gillies: In response to the parliamentary assistant, I think you have to take the amendments as a package. As you go through, subsection 3a(1) refers to "differences in compensation between female and male employees who are performing work of equal or comparable value."

Mr. Polsinelli: That is my point.

Mr. Gillies: Section 3b refers to the same and so on. Our intent is obvious.

Mr. Polsinelli: I agree with Mr. Gillies. You do have to take the amendments as a package, but taking your section 3 amendments as a package, I find that in subsection 3(1) you are implying there is no longer any group base comparison, because it is a comparison between employees. I then look at 3(2). You talk about comparisons between groups. If, as you indicate in subsection 3(1), the purpose of the bill is to identify and redress systemic gender discrimination and compensation in work performed by employees in the public sector, that does not imply in any way comparisons between groups.

If you then look at subsection 3(2), it says you want to compare between groups. You then eliminate the female predominance of any group and, all of a sudden, we do not know what groups to compare. You can compare any type of groups. My point is, you are right, we should look at the amendments as a package; but looking at them as a package, they do not make any sense.

17:40

Mr. Gillies: We draft legislation to react to the problems in the real world. I would have thought, when you look at our purpose in subsection 3(1), that in 1986 in Canada, if we are introducing legislation to redress systematic gender discrimination, it is obvious that the problem we are redressing is that women are paid 63 cents for every dollar a man is paid.

If you need another word or two in there to make that clearer, I do not have any problem with it, but we know what the problem is. The problem in 1986 is not that men are paid less than women. It is the reverse.

Mr. Polsinelli: Mr. Gillies, we all know what the problem is and we are all trying to address that problem, but the reality has always been that when legislation is implemented in the form of a statute, one looks at what the statute says and not at what the mover of the bill or section meant.

If the statute says something completely different or does not say what it was intended to mean, then the responsibility is on you and your party to look at these amendments again and phrase them so they effectively say what you mean.

Mr. Gillies: I reject the criticism. It is perfectly obvious what they mean to anyone looking at the bill. If you want to suggest other wording in subsection 3(1) that makes it clearer that women are underpaid in this society and men are not, go ahead, but it is obvious to anyone looking at the bill what we are after.

Mr. Polsinelli: It is not my responsibility to correct Mr. Gillies' amendments. This concern was brought forward by legislative counsel, indicating that the amendments are unclear and perhaps we should be careful to ensure there is no contradiction.

Ms. Gigantes: When we look at subsection 3(1) in the bill, we are looking at purpose. Subsection 3(2) is the way that purpose, generally speaking, is to be carried out in the first round of the legislation.

I am going to suggest to Mr. Gillies that if we look at the proposed NDP amendments 3 and 3a(1) and (2), they really cover much the same ground that has been covered in your amendments 3(1), 3(2) and 3a(1) and (2), except that in subsection 3a(1) you refer to the bargaining agent and in the NDP amendment 3a(2) we refer to a seniority system that is not gender biased.

The same ground is covered in each. While Mr. Polsinelli is stretching a point to say comparisons between female and male employees have not been provided for--because your subsection 3a(1) does do that--still, in the operative section of your amendments, which is subsection 3a(2), it does look as if the comparisons might be wide open.

I feel quite strongly we should make it clear at the outset that what we mean to address first and foremost in this legislation is discrimination on the basis of gender, and we should indicate we are going to do it by taking a look at the comparability of predominantly female jobs and their pay levels with comparable male-dominated jobs.

That is why I suggest to you very strongly that with a small amendment in the NDP motions that refers to your one additional element, which is the bargaining agent and the onus on the bargaining agent as you have spelled it out, which could be made as an amendment to our subsection 3a(1), we might have very comparable amendments that would meet Mr. Polsinelli's concern for clarity.

Mr. Gillies: I have no problem. I thought 3a(1) made it obvious that what we are looking for here is eliminating the difference in compensation between female and male employees. It is there. If 3(1) does not make it obvious enough, and your amendment does, I have no problem with it.



Substantively, your subsections 3a(1) and 3a(2) and my subsections 3(1) and 3(2) do just about the same thing. I suppose it is a toss of the coin who gets to put it forward. If you can accept the point we make about the bargaining agent as well as the employer, we are saying the same thing.

Ms. Gigantes: Fine. You have "bargaining agent" and we have "gender-neutral seniority system."

Mr. Gillies: You have the seniority system which, as long as it is not gender-biased, is a legitimate point.

Ms. Gigantes: Is it your understanding that your amendments 3(1) and 3(2) are covered in our amendment 3?

Mr. Gillies: Yes.

Ms. Gigantes: Our 3 provides the clarity for Mr. Polsinelli's--

Mr. Gillies: Yes, that is right. The difference between our amendments lies more in 3a. On 3, we are substantively in agreement, save that I will accept Mr. Polsinelli's point that 3a in my amendments obviates the intent of 3. Yours, in that respect, may be somewhat clearer.

Ms. Gigantes: How does Mr. Polsinelli feel about that?

Mr. Polsinelli: In Ms. Gigantes's amendment, which appears now to be comparing groups of jobs--it moves a little closer to what the government legislation effectively does but without having the minimum benchmark the government legislation has of 60 per cent for female predominance and 70 per cent for male predominance--how does she propose to identify the predominantly female and predominantly male groups of jobs?

Ms. Gigantes: As I explained before, the mechanisms we have set out in the amendments before you are that, first, in a unionized establishment those comparisons would be negotiated by joint bargaining teams made up of equal representation from management and employee representatives. That is clear. This is very much the Ontario Public Service Employees Union model that was proposed to us.

In nonunionized establishments in the full public sector, the employer would be responsible in the first instance for deciding what comparisons were reasonable for achieving the purposes of this legislation. The employer would make the comparisons, provide the information on those comparisons to the employees, draw up an equal pay plan, submit the basic information, the equal pay plan, to the commission; the commission would review it and see that it did not look outrageous and then give approval for the plan to go ahead.

If there were complaints, they would come (1) during the process where the employer provides information to employees--there might be a complaint made about whether the plan was adequate to address the problem of equal pay based on the information--and (2) once the plan was in place and operating. An employee would then be able to complain to the commission that for that employee or group of employees, equal pay for work of equal value was not being achieved.

17:50

The simple answer is (1) negotiation where there is a unionized shop and

(2) at the discretion of the employer in the first instance, where it is a nonunion shop.

Mr. Polsinelli: One further question. Sorry, I have almost forgotten my question, I think.

Ms. Gigantes: We were on the theme of how we would compare.

Mr. Polsinelli: Yes. The government legislation proposes an automatic inclusion of 60 per cent. Women in predominantly female groups of jobs that have over 60 per cent women in them are automatically included.

It seems that your amendment throws the whole process up in the air and everything has to be bargained as to what is included and what is not included.

Ms. Gigantes: In a union shop.

Mr. Polsinelli: Yes, but in a union shop our legislation would automatically include those females in groups of jobs that are predominantly 60 per cent male and everything else is left up to the bargaining process.

Why would you object to a 60 per cent predominance figure as a minimum standard and everything else could be bargained by the bargaining unit? Would that not give those women in those predominantly female groups of jobs a greater advantage, in the sense that they are automatically to be compared, and everyone else you may be concerned about would be left to the bargaining process?

Ms. Gigantes: Shall I let you in on a little secret?

Mr. Polsinelli: Please do.

Ms. Gigantes: The Attorney General leaked to me some basic concepts about the private sector equal pay bill today.

Mr. Polsinelli: But this is not dealing with the private sector.

Ms. Gigantes: He suggested the approach that might reasonably be taken by the government in drafting that legislation might be that in organized establishments, management and the employees sit down and work out what comparisons were reasonable and how the plan should be shaped.

I do not see why we get hung up on the 60 or 70 per cent. You know and I know, and we had submissions that told us, that that can be great in some instances, not good enough in others, manipulable in other situations and just will not leave people happy.

If we set up a mechanism where union and management negotiate and we provide a system of complaint, why are you unhappy?

Mr. Polsinelli: I think that while you are saying that the purpose of the act is to eliminate gender-based discrimination in work performed by employees of predominantly female jobs, you do not set up a benchmark to determine what predominantly female jobs are. You do not set up a benchmark with which these predominantly female jobs should be compared. It seems to me that it makes eminent sense to set up at least a minimum standard so that you know certain groups of jobs are automatically compared and everything else is left up to the bargaining process.



Your amendment is eliminating that minimum inclusion over which everything else can be bargained. You are saying bargain everything. The government legislation is saying these automatically get compared and anything else to be bargained has to be negotiated. You are saying forget the automatic portion of it; negotiate everything.

Ms. Gigantes: Mr. Polsinelli, you were here when we had submission after submission on this subject. I do not know if you were as impressed as I was on this point, particularly by the OPSEU brief. I just became absolutely convinced that it is a much more reasonable process to say to management and authorized employee bargaining agents: "Sit down and decide what makes sense in your establishment. Leave any problem that still exists. After management and bargaining agents have done their best, in their view, leave the complaint mechanism there to deal with it."

It does not matter whether the numbers are 50 and 80 or 60 and 70. They are manipulable. They are arbitrary. They may not reflect the changing nature of predominance by one sex or another in a certain work group. All these points have been raised to us and I think they are serious points.

Mr. Gillies: I agree with what Ms. Gigantes said. There is also the question of flexibility. I was quite taken the day the one delegation was before us and first raised the question of manipulation of job categories to get around the 60 per cent and 70 per cent levels. I said on the record at the time that had never occurred to me, but it is quite possible. If you build a measure of flexibility into the bill, as could be done by eliminating the fixed percentages, you will have many more instances where an employer and employees can work out something to their shared satisfaction that fits their work place and can be dealt with in that respect as opposed to putting out a situation where a fixed percentage can be played with or manipulated by one of the parties.

Your colleague, Mr. Callahan, put forward the concern earlier that we come up with a mechanism here that, once on display, is not going to scare the dickens out of the private sector. Building in a measure of flexibility is one way to do that.

Mr. Polsinelli: It seems that there is a fundamental misunderstanding or lack of understanding as to what a predominantly female groups of jobs means in the legislation. If we look at the definition, there are four criteria to determine whether or not the position or a group of jobs is a predominantly female group of jobs. It is all either/or. It is not an "and" situation where all four have to be met. If any one of these criteria is met, then it is a job category that gets compared because it is a predominantly female group of jobs.

The first one is those groups of jobs that have 60 per cent or more positions occupied by women. It is automatic. If you are in a job category where 60 per cent or more of your co-workers are women, you are automatically compared.

If we then look at clauses (b), (c) and (d), clause (b) says, "a group of jobs that the employer and the bargaining agent or agents agree to designate as predominantly female groups of jobs." There is bargaining between the bargaining agent and the employer.

Clause (c) says, "a group of jobs that the employer, with the commission's approval, designates as predominantly female groups of jobs."

Again, this contemplates the process where a complaint is filed to the commission and the commission agrees that it should be a predominantly female group of jobs.

Clause (d) says, "a group of jobs that is designated by the regulations made under this act as a predominantly female group of jobs." The 60 per cent predominance figure is a minimum standard. It is a standard for the benefit of the women in the province and in the public sector in that those who qualify under that minimum standard are automatically included. Everything else basically is left up to the bargaining process or the complaint-based mechanism before the commission. Your amendment says forget that minimum standard and negotiate everything.

I suggest that this is more advantageous to the women in the public sector because it automatically includes a certain percentage of the women in the public sector as those that would be compared. Either I am misunderstanding it or you are misunderstanding it.

Mr. Gillies: The other side of that coin is that it automatically excludes--

Mr. Polsinelli: No. Where is the exclusion?

Mr. Gillies: --for prima facie consideration. You are saying to that group, "Come back later in the complaints."

Mr. Polsinelli: No. This says these women automatically get included and everyone who is not automatically included can either bargain or make a complaint to the commission. You are saying nobody gets automatically included and everything is bargained. It is a lesser standard.

Mr. Gillies: That is not what we are saying at all. I do not disagree with the points you made about clauses (b), (c) and (d), but I do not see why you have to have an arbitrary cutoff in clause (a).

Mr. Polsinelli: It is not an arbitrary cutoff. It is a minimum standard. That is the difference. You brought up the proposition earlier of employer manipulation of the number of women in a particular group. I submit that, if there is employer manipulation, they would not come under the minimum cutoff of clause (a). But it is still a group that could bargain between the bargaining agent and the employer. The bargaining agent can make the same arguments that he would make under your proposal that this group should be included.

Under our bill, if the employer does not agree to include that group, they would have the protection of applying to the commission by filing a complaint and putting that argument forward to the commission to be included. Our legislation sets up a minimum number of people who would be covered and would require a comparison. Your amendments say: "There is no minimum number. Negotiate everything."

Mr. Callahan: It is double protection. You have bargaining or the other.

Mr. Chairman: I am trying to give some other members their turn to speak. Ms. Hart has been very patient in waiting for a long time.

Ms. Hart: I have forgotten what I was going to say. I had a question



of staff to see whether they could clarify for me the question in the Conservative amendment about whether a male group can compare with another male group. It seems we have gone beyond that.

Mr. Chairman: That was responded to. If there is no question about that, I will move to Mr. Cooke.

Mr. D. R. Cooke: I move we adjourn.

Mr. Chairman: A motion to adjourn is not debatable.

The committee adjourned at 6 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

TUESDAY, NOVEMBER 4, 1986

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Charlton, B. A. (Hamilton Mountain NDP)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Ramsay, D. (Timiskaming L)

Rowe, W. E. (Simcoe Centre PC)

Substitutions:

Callahan, R. V. (Brampton L) for Mr. Ramsay

Grier, R. A. (Lakeshore NDP) for Mr. Charlton

Clerk: Mellor, L.

Staff:

Neufeld, D., Research Officer, Legislative Research Service

Revell, D. L., Legislative Counsel

Witness:

From the Ministry of Labour:

McAllister, Dr. H., Acting Executive Assistant to the Assistant Deputy

Minister, Labour Policy and Programs



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, November 4, 1986

The committee met at 3:48 p.m. in room 151.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: Members of the committee, if we could come to order, we will begin our discussions at subsection 3(1) again, which is Mr. Gillies's amendment.

Before proceeding, I would like to point out to the members of the committee that the information you requested from staff with respect to the cost estimates of the extension of coverage of Bill 105 have been placed before you. You may not have had a chance to peruse that information at this time, but perhaps as we carry on with the meeting, you can read it at your leisure and determine whether it adequately represents the information you requested.

As I recall, we did not have, and that is subject to correction by the committee, a speaker on the floor on subsection 3(1) yesterday. I will recognize anyone who wishes to comment. Since it is Mr. Gillies's amendment, I will go to Mr. Gillies first. You can proceed, if you will.

Mr. Gillies: Excuse me while I get some of this mountain of paper in order here, Mr. Chairman.

Ms. Gigantes and I have had some discussions since the committee last met about the matters we undertook to discuss for the committee's benefit in terms of where we are going in section 3. I have a couple of suggestions I want to make to the committee.

We in our party feel that much the same is achieved by the New Democratic Party's proposed amendments to section 3--I am referring specifically to the NDP section 3, subsection 3a(1) and subsection 3a(2)--as is achieved by my proposed amendments, subsection 3(1), which is on the floor for the time being, subsection 3(2) and subsection 3a(1) and subsection 3a(2).

The problem was debated yesterday of the intent of my amendment, with regard to the possible interpretation it allows for the comparison of male-dominated job groups. As we looked at it and went through all the amendments, although I believe the intent to be relatively clear, it is legalistically open to question and I accept that. In other words, I believe the point Ms. Hart was making yesterday is valid.

There is one relatively minor but substantive difference between our amendments as drafted--I am not talking about form now; I am talking about substance--and what Ms. Gigantes had proposed. We would like to see the inclusion of our wording regarding the responsibility not only of employers to move towards the achievement of pay equity, but also the reference we have in

our amendment to the responsibility of employee bargaining agents in that same regard.

Ms. Gigantes is happy to include that change in her amendment, which is really six of one and half a dozen of the other. Either one of us could then move that amendment, so I propose that we proceed with that. In order to accommodate that procedurally, I will withdraw my amendment to subsection 3(1) so that the new amendment as redrafted can be put before the committee.

At this point also, Mr. Chairman, I would like to put a proposal before the committee on the whole question of section 3b. We have had time overnight to look at the wording, ramifications and intent of section 3b. I want the committee to know that what we want here is simply this: We want those who are intended to be covered by this legislation not to try to frustrate the intent of the legislation by contracting out.

In other words, what we are after, in terms of the concern expressed by Mr. Callahan, is not that anyone who ever wants to sell a paper clip to a library board or any other quasi-public organization in the province would have a pay equity plan analogous to the pay equity scheme in this bill. Presumably these people will all be covered anyway when the government introduces its private sector legislation in the weeks to come.

What we want is not so much, if you will, contract compliance. I have talked to legislative counsel about it, and what we want is sort of a no-tricks clause. Apparently there is a section in the Income Tax Act and there are other precedents that can be drawn upon to achieve what we want to achieve, which Mr. Callahan believes is exceeded by section 3b. In other words, section 3b may go further than we want.

I do not have to withdraw section 3b because it is not being moved. I propose at the appropriate time not to call section 3b but rather to try to draft another proposed amendment that will address our concern. At that time, I will put it before the committee for its consideration.

Ms. Gigantes: Mr. Chairman, do you consider what Mr. Gillies has said to constitute procedurally the removal of his previously put amendment and the substitution therefor of the NDP amendment?

Mr. Chairman: I think it would be in order for you procedurally to formally remove your amendment, Ms. Gigantes.

Mr. Gillies: As amended.

Mr. Chairman: If it is considered, as you are negotiating here between the two of you, a friendly amendment, you may wish to incorporate it, embody it in the motion or treat it as an amendment or a subamendment to--

Ms. Gigantes: I think we will run into a problem if we do that.

Mr. Chairman: That is your determination to make. I am only offering you an agenda of alternatives.

Ms. Gigantes: If I could make a suggestion, I suggest that procedurally you follow the suggestion Mr. Gillies has put forward, which is to treat the situation as one where he is withdrawing his amendment and placing the one we have numbered subsections 3a(1) and 3a(2). Was that your intent, Phil?



Mr. Gillies: Yes. In fact, if we take your amendments, subsections 3a(1) and 3a(2), and I insert the line about the bargaining agents, then we have it.

Ms. Gigantes: So you are withdrawing your amendment?

Mr. Gillies: Yes, I withdraw.

Mr. Chairman: Could I make a suggestion to tidy it up? If the Conservative amendment is withdrawn and the NDP amendment is proposed--

Ms. Gigantes: Then you want to amend it. Go ahead.

Mr. Chairman: Alternatively, if Ms. Gigantes agrees to amend it in one motion by simply altering the wording, we can tidy it up with one motion.

Ms. Gigantes: Yes, I can do that.

Mr. Chairman: Could I now get you to move, or are you going to withdraw your amendment?

Mr. Gillies: Yes. The simplest way to accommodate it procedurally is if I now withdraw the amendment before the committee, subsection 3(1). I am quite happy if Ms. Gigantes wishes to move her amendment and include in it my suggested changes. We are quite happy with that.

Mr. Chairman: Is that agreed?

Ms. Gigantes: Agreed.

Mr. Chairman: That being agreed, Mr. Gillies has withdrawn his amendment and I will now look to Ms. Gigantes to make her motion.

Ms. Gigantes moves that section 3 of the bill be struck out and the following substituted therefor:

"3. The purpose of this act is to eliminate gender-based discrimination in compensation for work performed by employees in predominantly female jobs in the public sector of Ontario.

"3a(1) No employer shall establish or maintain and no bargaining agent shall bargain for gender-based differences in compensation between employees in the employer's establishment who are performing work of equivalent value.

"(2) Subsection (1) does not apply where payment is made pursuant to a seniority system that does not discriminate on the basis of gender."

Mr. Gillies, does that meet with your satisfaction in terms of the changes you wished to incorporate in the main motion?

Mr. Gillies: Yes, that embodies the change, and we are quite happy to support that.

Ms. Hart: My concern has to do with the memo we got from staff, given the change in what has just occurred in section 3. May I ask the staff some questions about that?

Mr. Chairman: By all means.

Ms. Hart: The memo that was provided to the committee talks about mixed groups of jobs. Perhaps Dr. McAllister can tell me exactly. Is that all jobs where there are men and women? I do not know what you mean by mixed groups.

Dr. McAllister: Mixed jobs refer to jobs that are neither predominantly male nor predominantly female. In other words, they would have fewer than 60 per cent females and fewer than 70 per cent males. It is the grey area that Mr. Gillies referred to yesterday in reference to one of the diagrams we were shown during the submission of the Ontario Public Service Employees Union for the state of Minnesota.

Ms. Hart: When you add all those jobs in, you are saying it increases the number of employees covered by the bill by approximately 40 per cent. Is that still valid given this new amendment? Does that change it at all?

Dr. McAllister: I do not believe it would change the mixed groups of jobs that would be covered. What is missing from this costing estimate, as noted in the last bullet point, is the inclusion of employees who are not in groups of jobs. Section 3a does not have a reference to groups; therefore section 3a would include people who are not in groups of jobs. It would be a more extensive coverage than this.

16:00

Ms. Gigantes: Could you give us an example of somebody who is in a predominantly female job but not in a group of jobs?

Dr. McAllister: If you remove the reference to "group," then you would be including potentially females in what we now identify as predominantly male groups of jobs. You no longer have a group focus to the program and our estimate of numbers included in the coverage would no longer be valid. It would be an underestimation of employees covered.

I can give a concrete example. Under Bill 105, without amendments, you have to be in the secretarial group, for example, in levels 1, 2, 3, 4, 5, to be included in the program. If you happen to be in a level of a predominantly male group such as gardeners--and maybe the lowest level of gardeners happens to be female--you would not automatically be included in the program under Bill 105 in its unamended state. This amendment would include potentially those females in what we call a predominantly male group. It would extend the coverage beyond what is in this memo.

Ms. Gigantes: What we are talking about including here is classifications in which there may be a predominance of females in a group that may be more male than female.

Dr. McAllister: Section 3a has no reference to "group" whatsoever, so you could also be including individuals. Presumably, if you had one female in what I call a male level or male group, she could conceivably lay a claim that she should be paid the same as a male somewhere else in the organization who was performing work of equal value inside or outside the group. Work would no longer be relevant in terms of comparison under this amendment.

Ms. Gigantes: It must be very difficult to make an estimate of how many such comparisons might be made in the full public sector.



Dr. McAllister: Without a group basis, it is virtually impossible because no one else has ever done it.

Ms. Gigantes: To add 40 per cent is--

Dr. McAllister: Assuming the group focus was still operative and building on a number of assumptions, I can give you an estimate of the number of employees covered. This is a rough estimate, of course, because we do not have data to work from for the broader public sector. It is essentially impossible to indicate who might benefit without a group focus.

Ms. Gigantes: The estimate of how much larger the cost would be will be a very rough and ready estimate.

Dr. McAllister: Yes, it is a rough estimate.

Ms. Hart: So that I completely understand what you are saying, you told us in your second last point that your rough estimate of the annual increase in ongoing costs goes from \$88 million to \$862.4 million. Is that with or without the group basis?

Dr. McAllister: That is with the group basis, extending coverage to the broader public sector, as has been done with the amendment to section 2, and including mixed groups of jobs in the broader public sector, based on the proportion of employees who fall within predominantly female and mixed groups of jobs in the public sector.

Ms. Hart: Given the amendments we now have before us for section 3 and section 3a, since it is not group based, can we assume that the figure will be higher?

Dr. McAllister: Logically, it would have to be higher, but I would be very reluctant to do a guesstimate as to how much higher it would be.

Mr. Callahan: At the top of the page 2, am I to conclude that the addition of the mixed group of jobs in the broader public sector, as I understand is envisaged by this amendment, increases the cost by \$246.4 million?

Dr. McAllister: That is correct.

Mr. Callahan: A year?

Dr. McAllister: Yes. That is the ongoing cost. I can explain what that is, just to refresh people's memories.

When we talked about the cost of implementing Bill 105 in its unamended form, we talked about a pay equity gap of four per cent based upon the Minnesota experience. Four per cent of total payroll in the Ontario public service happens to be \$88 million. Once we have achieved pay equity in the Ontario public service, there will be an ongoing cost of \$88 million a year; so that is the annual ongoing cost of pay equity.

All these estimates are based upon an annual ongoing cost once pay equity has been achieved; in other words, it is not the incremental, year-by-year costs of getting there.

Mr. Callahan: It is there.

Dr. McAllister: Yes.

Mr. Callahan: I just want to be clear. With the narrow public sector it is \$88 million?

Dr. McAllister: The narrow public service; that is correct.

Mr. Callahan: The narrow public service is \$88 million. Expanding it to the broad public service, it is \$616 million per year?

Dr. McAllister: That is correct.

Mr. Callahan: By expanding it under the present combined NDP-Conservative amendment, it increases by another \$246.4 million to a total of \$862.4 million?

Dr. McAllister: That is correct.

Mr. Callahan: I did want to ask Mr. Gillies a question on section 3b, and I am not sure at this point if it is out of order. We were at that stage when we got into this question.

The Vice-Chairman: I wonder if I can first ask if there are any other questions for the staff, to try to keep the members' minds focused. Were there other questions for Dr. McAllister on the memorandum that was before us? No.

In that case, I think the discussion should be confined to the section under amendment. Mr. Callahan, the discussion you want to get into on 3b would be appropriate following disposition here at such time as there may be an amendment placed. There is no amendment to 3b on the floor. What is on the floor is subsections 3a(1) and (2).

Mr. Callahan: Perhaps this can be clarified for me, but it was my understanding that section 3b was not going to be moved today but redrafted.

Mr. Gillies: We appreciate the problem with the drafting of section 3b. We know the problem we want to address; so we propose to come back with a different amendment at some point during the proceedings, but section 3b will not be moved.

Mr. Callahan: I wonder if I can take this liberty now, recognizing what you have said. You will all be happy to hear I will not be here any more, and I would like to put this caveat to Mr. Gillies. I ask you to look at the very real concern I had about contracts that municipalities have put out for three or four years for garbage or whatever. When you redraft it, make sure it does not impact on those contracts, because I have a very real concern that if it is passed and you do not look after that, you will have municipalities, school boards and hospitals that have contracts for a three-year period or whatever length of time being required to say to those contractors, "You must have a pay equity scheme in place," and they will say, "Okay, but it will cost you X dollars extra." I hope you would keep that mind in drafting.

Mr. Gillies: I am sure we can. As I said earlier, what we are after is to try to eliminate possible abuses or those who would try to frustrate the legislation by contracting out.

The city of Brampton has an ongoing contract with a sanitation company. Clearly, it did not do that to frustrate pay equity legislation; it is an



arrangement it has. I am sure we can come up with a proposed amendment that would take that concern into account.

Mr. Callahan: Thank you.

The Vice-Chairman: I do not have a speakers' list.

Ms. Gigantes: Are we ready to vote?

The Vice-Chairman: If there is none, do you require the amendment read? Are you clear on the amendment?

Mr. Polsinelli: No.

The Vice-Chairman: The motion is that section 3 of the bill be struck out and the following substituted therefor:

"3. The purpose of this act is to eliminate gender-based discrimination in compensation for work performed by employees in predominantly female jobs in the public sector of Ontario.

"3a(1) No employer shall establish or maintain and no bargaining agent shall bargain for gender-based differences in compensation between employees in the employer's establishment who are performing work of equivalent value.

"(2) Subsection 1 does not apply where payment is made pursuant to a seniority system which does not discriminate on the basis of gender."

You have heard the motion. All those in favour? Opposed? The motion carries by four.

Shall section 3, as amended, carry? All those in favour? Opposed? Carried.

Section 3, as amended, agreed to.

16:10

On section 4:

The Vice-Chairman: We move then to section 4.

Mr. Callahan: This is the Conservative amendment, is it? Oh, there is no amendment.

The Vice-Chairman: No, Mr. Callahan. It is simply section 4 of the bill. I do not see amendments in front of me on that from anyone. I do not believe there are any amendments.

Does legislative counsel wish to address the committee on this?

Mr. Polsinelli: Can I ask a question of Ms. Gigantes or Mr. Gillies regarding the amendment that was just passed?

The Vice-Chairman: Because we have completed section 3, I do not think it would be appropriate at this point unless there was a motion to reopen.

Mr. Polsinelli: I do not have a motion. I just wanted to ask a question.

The Vice-Chairman: I realize that, but I do not want us to get off the track in what we are doing. If the committee wishes to provide unanimous consent to return to section 3--

Ms. Gigantes: If he just wants to ask a question about what we passed, that is fine.

The Vice-Chairman: I heard unanimous consent. Mr. Polsinelli.

Mr. Polsinelli: Ms. Gigantes, I had not quite understood the combined motion, but once pay equity has been achieved between two groups of equal value, assuming those groups have different bargaining agents, the amendment 3a as passed, does that mean for all intents and purposes, and for the rest of time, they have to receive identical increases except for subsection 2, which talks about seniority?

As I read it, it says, "No employer shall establish or maintain and no bargaining agent shall bargain for gender-based differences in compensation between employees in the employer's establishment who are performing work of equivalent value." Once that has been implemented, it means you have two job groups of equal value but receiving the same pay. Does that mean that in any bargaining situation in the future they have to receive identical increases? If they do not receive identical increases, is it not open to the argument that the differences in increases are because of gender-based discrimination and therefore they contravene the section and are illegal?

Ms. Gigantes: It might. I suggest to you, though, that the likely development will be that the adjustments will take place according to equal pay planning, and if problems arise, people will not seek to use that section but rather to lodge a complaint with the commission through the normal complaint process.

Mr. Polsinelli: It is conceivable that if you have different bargaining units, once you have established that job groups in different units are of equal value, effectively those bargaining units will have to bargain together in those job groups.

Ms. Gigantes: They will have to be aware of what has happened. Would you have it some other way?

Mr. Polsinelli: I am just asking a question on your amendment, Ms. Gigantes.

Mr. Chairman: Does that satisfy the questions you wished to raise, Mr. Polsinelli?

Mr. Polsinelli: Yes.

Section 4 agreed to.

On section 5:

Mr. Chairman: There are two amendments on section 5. We will start with Mr. Gillies's amendment. I believe it is appropriate that Mr. Gillies introduce his amendment first.



Mr. Gillies: The government has an amendment.

Mr. Polsinelli: We may have reversed bills.

Mr. Chairman: My understanding is that the government amendment follows section 5 in that it is an addition. If that is an accepted interpretation, I will allow the Conservative amendment to go first. It can be debated in concert with the New Democratic Party amendment, I believe, as have others. If that does not meet with your approval, we will separate them. Again with the concurrence of the government members, I will take your proposed additional amendment to section 5 following that.

I do not hear any dissent, which is unusual.

Mr. Polsinelli: If it meets with the committee's concurrence, I was going to suggest that the sections that have government amendments be stood down until the minister can be present, which I believe is the next meeting of this committee.

Mr. Chairman: We had a rather lengthy discussion on this point in the past. I do not want to reopen it.

Mr. Polsinelli: Not on this point.

Mr. Chairman: I appreciate it was not on this amendment. Your request to challenge the amendment and have it stood down until the arrival of the minister is quite in order, except I thought we had an agreement on the committee that we would not do this for every amendment in that the committee has already decided it wished to proceed in the absence of the minister.

Mr. Polsinelli: That was a completely different discussion. What I suggested to Ms. Gigantes and the assurance I gave her was that I would not move the adjournment of this committee after every amendment. I am simply suggesting that since we do not have a government representative present at this committee, the government amendments and those sections dealing with the government amendments be stood down.

Mr. Chairman: Just the government amendments; I misunderstood you. You are not talking about amendments on the part of the opposition.

Mr. Polsinelli: You may deal with those as much as you want. I am simply suggesting that the sections where there are government amendments be stood down until a government representative, namely, the minister, can be present to speak to them.

Mr. Chairman: Do we have agreement on that point?

Ms. Gigantes: What was the point? I am very sorry.

Mr. Chairman: Very briefly, the point is that we may proceed with the opposition amendments. Mr. Polsinelli is asking that only the government amendments be stood down until such time as the minister may be present.

Ms. Gigantes: What is that going to mean procedurally? We have a series of amendments addressed to the same clauses as government amendments in the next section of the legislation. Does that mean we pass amendments now based on motions by either the NDP or the Conservative Party and then come back and have the whole discussion again when the minister is around?

Mr. Polsinelli: What I suggest is that we leapfrog. Those sections of the bill that have government amendments would be stood down until the minister is here, and we would deal with those sections that do not have government amendments.

Ms. Fish: The difficulty I have with the proposal is twofold. On the one hand, that which has been identified by Ms. Gigantes, is the number of government amendments that treat of several sections throughout the bill, many of which are the subject of amendments from the official opposition and the third party.

Second, to the best of my knowledge of procedure, the government amendments will be put by one of the four government representatives sitting on the committee, not by the minister, and in debate in committee would presumably be argued by one of the four government members sitting on the committee putting the motion, as is commonly the case, since the minister cannot move motions in committees.

Therefore, I have a little bit of difficulty understanding what the problem is in having the parliamentary assistant to the Minister of Labour (Mr. Wrye), paid to carry legislation in the minister's absence, unable even to move a government motion and justify that motion at committee.

16:20

Ms. Gigantes: The proposal that comes from Mr. Polsinelli now would effectively stop the work of the committee today, and it would mean that when we look at the operative parts of the bill, the mechanisms that are described for the establishment of equal pay under this legislation, we would not be able to look at them as a whole.

The proposals that come from the New Democratic Party adopt the ideas put before us by serious submissions from the public, and they are to amend the mechanisms of the bill. While Mr. Polsinelli may want to cling to the spelled-out mechanisms in Bill 105, I suggest we have every right to put forward our alternative proposal at this stage, without waiting for the minister to be here or to have to chop up the amendments we have proposed when they constitute a package. If Mr. Polsinelli follows the purpose of the package, he may find it to his taste. I do not think we can proceed if we do as he suggests.

Mr. Polsinelli: It has been the practice that the committee always directs its own business, and this committee has chosen to direct its own business in many areas, including that of parliamentary procedure. I do not see why we should change at this point.

Our amendments were predicated on the original bill as drafted. Personally, I am not prepared to introduce those amendments until the minister is present. If the majority of the committee members wish to proceed with their amendments and with the sections, they can go ahead and do so, but I will not be placing any government amendments until the minister is here and can speak to those amendments.

I should note that it has always been the practice of committees dealing with government legislation and bills to have a representative of the government present to deal with those sections; at least it has been the practice in the 18 months that I have been a member of the Legislature.



Ms. Gigantes: That is not true. ,

Mr. Gillies: May I make a suggestion? The government amendments coming up in the next couple of sections and my amendments for the next couple of sections are relatively specific: changes to the mechanism proposed in Bill 105, as unamended.

As we all know from the walk-through, Ms. Gigantes is proposing a completely new mechanism in sections 5 through 15, quite broad in scope, which may have some merit and certainly merits some debate. I would be quite happy to stand down my amendments and defer to Ms. Gigantes so she can put forward her proposed new mechanism as a package, if the government members would do the same.

First, it is logical to do so, because if the new mechanism proposed by the NDP is not adopted by the committee, it would make more sense, Mr. Polsinelli, to go back and look at your amendments and my amendments, which are more particularly tied to the details of the bill anyway.

Second, I believe it can be done in the absence of the minister, because it is a whole new package; it does not involve specific changes to the mechanism as you have proposed it.

I would be happy to do that if the Liberal members would similarly be happy to do so.

Mr. Chairman: I want to make clear to the committee that having closed off a section, whether we deal with it by simply finding agreement on it unamended or finally amending it and closing it off, we will require the unanimous consent of the committee to reopen that section. Those are the standing orders as they relate to committee procedure.

Mr. Polsinelli: They do not apply to this committee.

Mr. Chairman: Yes, they do, while I am chairman.

Mr. Polsinelli: Section 15 does not.

Mr. Chairman: If you want someone else to chair in those circumstances, I will gladly step down and let someone else try to bring order to this. I am only telling you the rules as I understand them and as I have to apply them. They will apply equally to all parties.

No matter what you decide to do at this point, I am suggesting to you well in advance of getting yourselves into a jackpot on something that may happen at some stretch down the road that unanimous consent is going to be a requirement. You can leave a section open for further debate. I have no problem with that, but once you have dealt with and closed off a section, you will all have to agree to reopen that section or effectively we will never get through this bill.

Mr. Gillies: I quite accept that procedurally you have laid out the situation rightly. In fairness to a logical approach to this bill, I believe that the new mechanism, the new package of amendments in the guts of the bill, which is what we are getting into now in terms of procedure, should be dealt with in total in terms of the mechanism that Ms. Gigantes is proposing. If unanimous consent is required to do that, our party would be pleased to give that unanimous consent. Do you see what I am getting at? Our amendments to the

upcoming sections, the mechanical sections, the implementation of the bill, are very specific and so are yours. How can we logically bounce back and forth?

Mr. Polsinelli: Are you saying that the New Democratic Party amendments are better than your amendments?

Mr. Gillies: Not at all. I am saying that they are very different and how can we logically--

Mr. Polsinelli: Why do you want to deal with them first?

Mr. Gillies: How can you logically do justice to a complete rewrite of the guts of the bill, as proposed by one of the parties, without bouncing back and forth among other amendments?

Mr. Polsinelli: I would have thought the same logic would have applied and that the rationale on your part would have been: "Our amendments are better. Our package is better. As the official opposition, therefore, we should deal with our package first and if that gets defeated, we will deal with the NDP package." It is surprising that you want to deal with the third party's package first.

Mr. Gillies: Unlike yourself, I have an open mind in terms of the various directions we can go in coming up with a better bill than the one you have put before us. Procedurally, I fail to see how we can bounce back and forth, debating section by section a completely new mechanism for implementation proposed by one of the parties, and at the same time debating the other two parties' respective amendments to the mechanism as proposed in the bill. It would be logically impossible to do it.

Mr. Polsinelli: For all the reasons that Mr. Gillies has set out, the minister should be here dealing with this bill. It is unfortunate that the committee has decided to proceed in any event. In terms of my involvement as a member of this committee, I do not feel comfortable, in the light of the new bill we have before us, in determining which of the government amendments now should be placed, which should be withdrawn and which should be amended. Therefore, I am not prepared to proceed with the government amendments until the minister is present.

My initial request is still before the committee, that we defer the sections where the government amendments are or will be placed. If that is not acceptable to the committee, as it has chosen to disregard procedure in the past and as it has chosen to disregard section 15 of the standing orders, which you so amply quoted last week, Mr. Chairman, it can choose to disregard my request and proceed with Mr. Gillies' suggestion. I think the very fact that he has suggested that this goes to the heart and guts of this bill makes it fundamental that the minister should be here to deal with this bill.

Ms. Gigantes: There is nothing that is stopping the placing of Liberal amendments to this bill. It is a matter of normal process, as has been stated many times, and Mr. Polsinelli has to accept this. He has been a member of the standing committee on administration of justice while this has happened. On very important legislation, when a minister was not able to be present, the parliamentary assistant carried the legislation, carried the amendments and made important decisions about amendments to amendments on the government position. Talk to Mr. Ward about the role he carried out for the Minister of Health (Mr. Elston) in dealing with amendments to the Mental



Health Act during the course of discussion on Bill 7. Remember yourself what happened.

Mr. Polsinelli: The government package was accepted in that bill.

Ms. Gigantes: We have heard this discussion 5,000 times at this stage.

Mr. Polsinelli: You will recall that in dealing with the Mental Health Act, the government had a package which was debated. The government position--

Ms. Gigantes: I believe I have the floor.

Mr. Chairman: You will have ample opportunity to respond. Ms. Gigantes still has the floor.

Ms. Gigantes: I am sorry Mr. Polsinelli is unhappy. I think if he turns with goodwill and looks at the amendments I am going to move, he might decide that he, personally, likes them and might advise the minister that they look as if they will to effect a good piece of legislation for the people of this province. I propose to proceed to place the amendments.

16:30

Mr. Chairman: If there is no agreement with respect to reopening sections, then if those sections are closed off and if we do not get unanimous agreement, there will be no opportunity for the government amendments to be placed at a later date. Is that understood?

Ms. Gigantes moves that sections 5 and 6 of the bill be struck out and the following substituted therefor:

"5. Plans to provide for equal pay for work of equal value shall be established and implemented in accordance with this act."

Ms. Gigantes: The section we are changing, as written in Bill 105, is a section where we see the establishment of a mechanism that leads to great complexity later in the bill. Subsection 5(1) spells out how pay equity, which apparently is somewhat different from equal pay for work of equal value, is to be established by the finding of a job rate for a representative job level--

Mr. Polsinelli: On a point of order, Mr. Chairman: I apologize to for interrupting Ms. Gigantes, but my understanding of procedure is that government amendments are placed first, then those of the official opposition and then the third party? Is that incorrect?

Ms. Gigantes: I understood you were refusing to place amendments.

Mr. Polsinelli: No, we do have--

Mr. Chairman: I am taking them in chronological order in the bill. Can I explain in brief what I said previously?

In this particular section, the opposition amendments really constitute the first part of section 5 in terms of their amended direction. The government amendments follow as an addition to section 5. I simply ruled that the chronological order will be applicable in this particular instance because

that was the way the amendments would have application to this section. It is not a question of whether the government amendments come first. It is a question of where the amendment applies. Your government amendment applies after the amendments that now are being debated. That is the only reason I am taking them in this order.

Mr. D. R. Cooke: Why are you taking the New Democrats before the Conservatives?

Mr. Chairman: Because there was an agreement that Mr. Gillies would stand down and allow Ms. Gigantes to proceed with hers. They have agreed to that.

Mr. D. R. Cooke: You will then ask the Conservatives to present an amendment if the NDP amendment fails. Now, what happens to the NDP amendment?

Mr. Chairman: I am not going to ask anybody to do anything. They are going to do whatever they wish to do following the placing of the NDP amendment. I have no idea, and I say this without any equivocation whatever, what Mr. Gillies is going to do next. If you are looking to me for some anticipatory actions, I cannot give them to you.

Mr. D. R. Cooke: I am just trying to make sure I understand--

Interjections.

Mr. Chairman: Order. Ms. Gigantes have you finished speaking to your amendment?

Ms. Gigantes: No, I have not.

Mr. Chairman: Can we give Ms. Gigantes the floor and then I will entertain Mr. Callahan's question following the placing of the amendment.

Ms. Gigantes: When you look at the amendment I have proposed, section 5 substitutes for Bill 105, sections 5 and 6. Essentially, the proposal duplicates the purpose of section 6, although it substitutes the phrase "equal pay for work of equal value" instead of "pay equity" for the reasons I discussed yesterday.

The removal of section 5 accomplishes the losing of a section that begins the elaborate setting up of representative job levels, comparisons between groups of predominantly female job groups and predominantly male job groups rated at the 60 per cent and 70 per cent test levels, etc. Because we have already agreed that this is not how we are going to proceed in this bill, that we are going to leave the system as one where the comparisons shall be made without benefit of these arbitrary tests, section 5 would not fit into the bill as we are amending it.

The proposal I have made in section 5 is a simple one that removes the existing section 5 which sets out the beginnings of that mechanism. Essentially, it is to establish what is established in the existing section 6 with the difference that we will not be talking about pay equity as defined in of this legislation. Clearly, we will be talking in this legislation about equal pay for work of equal value.

Mr. Chairman: Mr. Callahan has a question.



Mr. Callahan: It was actually a point of clarification. You have indicated that in this committee, if we proceed with a section and it is dealt with, it cannot be reopened without unanimous consent. This is probably a question showing my newness in this area, but when it gets back to the House, to committee of the whole, do you require unanimous consent?

Ms. Gigantes: No, that is a whole new discussion.

Mr. Chairman: It is only in committee. The purpose of that rule, which is understandable, is that someone in a minority position who disagrees with a decision on a clause or a section of the bill could constantly be asking to re-open in an attempt to win the day on his argument. The rules have been set up in such a way as to require the consent unanimously of all committee members. It is not my rule.

Mr. Callahan: What happens when it gets to the House in committee of the whole.

Mr. Chairman: Then it is open.

Mr. Gillies: The House can re-open and re-amend the bill.

Mr. Callahan: With unanimous consent?

Mr. Gillies: Even without; it is a completely new statement.

Mr. Chairman: If that answers your question, I will go on to Mr. Polsinelli.

Mr. Polsinelli: Ms. Gigantes, yesterday evening or late yesterday afternoon, we had quite an extensive discussion on the 60 and 70 per cent figures for predominantly female and predominantly male groups of jobs. Were you not moved at all by the discussion of the government figures requiring an automatic inclusion for women working in jobs where there is at least 60 per cent females employed? I am sorry. I may be lost in the wording here again.

The discussion we had yesterday afternoon was that in the government bill, a predominantly female group of jobs was defined under the definition section in the bill, and it talked about an automatic comparison for those individuals in groups of jobs 60 per cent of which were female, and everything else could be bargaining for. By eliminating the gender predominance in determining a female group of jobs are you not putting a greater onus on those individuals in the civil service and the public service to obtain a comparison? Do they not have to win an initial battle with their employer to be compared?

Ms. Gigantes: I did not accept your proposal yesterday according to the reading of what is in Bill 105 and I do not today, especially given Dr. McAllister's information about the numbers of people who would be included depending on whether you use the 60 or 70 per cent test.

What you are saying is the 60 and 70 per cent test provides that they are going to be dealt with. They can be dealt with any way at all after that. I think the 60 and 70 per cent test that we dumped yesterday, not to mince words, is one we are gladly relieved of. It will be a benefit to the women affected by this legislation that we are relieved of it because we are removing arbitrary comparisons that can be manipulated. That is the reason the majority of this committee turned down this notion yesterday. What I said in

support of the amendment I have just put is that, having done that, a majority of the committee then will logically wish to remove section 5, which my amendment proposes to do.

Mr. Polsinelli: I do not accept that as an explanation. If we are looking at the definition of what is a predominantly female group of jobs--I took you through that yesterday--a predominantly female group of jobs means (a) a group of jobs that on the effective date has 60 per cent or more of the positions in that group occupied by women, or (b) a group of jobs that is bargained as a predominantly female group of jobs. Now it is either/or. If 60 per cent of that job group is occupied by women, you are automatically compared. If you are not 60 per cent occupied by women, then you bargain to be compared.

16:40

Your amendment says that you have to bargain for everything. You have to bargain for every job group to be compared. We have to remember, and I guess you are well aware, that we are dealing with a sector that has been discriminated against. This is affirmative action legislation. It is a sector that historically has been discriminated against. The bargaining unit has not been able to score any Brownie points to date because it has not been able to rectify the systemic discrimination. There have been weak bargaining units. Now you are saying, "Weak bargaining unit, go bargain with the employer so that you can compare a job category." Would it not make more fundamental sense to say that automatically it is these people you compared and then above and beyond that we can bargain any additional groups that should be compared?

Ms. Gigantes: We think not, Mr. Polsinelli. If you provide that there is going to be a dedicated amount of payroll set aside, the employer will have no advantage in not using it for the purpose for which it has been set aside. Then it is not going to be difficult for women and their bargaining agents to be able to make arrangements to establish equal pay for work of equal value and use those dedicated payroll amounts to bring those benefits directly to women.

Can I suggest one other thing? You have argued out of one side of your mouth one day and the other side of your mouth the other day. Further, you and your colleagues have said different things on the same day in that you have told us that if we get rid of the 60 per cent and 70 per cent test as in Bill 105, we are going to be adding so many people to the coverage of the bill that the cost is going to be astronomical.

That suggests to me that you do not care whether equal pay for work of equal value is being achieved in this legislation, but simply whether you can bring forward some legislation that is going to produce some kind of measurable result, which is not my object. My object is actually to see us get equal pay for work of equal value for women in Ontario, starting first in the full public sector. Second, you will turn then and say, "There are going to be women left out if you move away from the 60 and 70 per cent inclusion standard it now has."

Mr. Polsinelli: There is a greater chance.

Ms. Gigantes: Suddenly, it is not an exclusion standard where you can say, "These people are not covered and we do not have to pay for them." Suddenly, it becomes an inclusion standard. You have to make up your mind



which it is. I will tell you the way I think is best; it is what we have in this amendment.

Further, this committee agreed yesterday based on submission after submission, not just from women in union shops, not just from women who are speaking as bargaining agents for other women and not just from women, that said, "Get rid of those arbitrary figures." We were told the 60 per cent cutoff would have eliminated every settlement that has been made under the federal legislation. I do not know whether you believe that, but I do. I reject those arbitrary levels. The committee rejected them yesterday. The proposal I put before you is simply a logical extension of our decision yesterday.

Mr. Polsinelli: Ms. Gigantes, whether those are automatic inclusion figures or automatic cutoff figures is very simply resolved. All you have to do is read the definition. If you have read and understood the definition, you will recognize there are automatic inclusion figures. I take you through it again. To qualify as a predominantly female group of jobs, a job category has to be occupied by 60 per cent women. That is clause (a). You then look at clause (b), which gives the bargaining unit the ability to negotiate additional groups to be covered. Clause (c) gives you a right to complain to the commission if you cannot reach a consensus with the employer. Everything you have we have in the definition of predominantly female group of jobs.

In addition to that, we have an automatic inclusion of 60 per cent. That is in the English language. All you have to do is read the section and you should understand it. You may not have understood it today, but it is very simple. All you have to do is go to the definition, read it and understand it.

In terms of the figures Dr. McAllister has brought forward, you cannot say we are arguing out of both sides of our mouth. She was asked to estimate what the cost would be. For her to estimate what the cost would be, she had to make a fundamental judgement or assumption. The assumption she made was that the systemic discrimination in the mixed groups was the same as the systemic discrimination in the predominantly female groups of jobs. If she had not made that assumption, she would not have been able to make the comparison.

I submit to you that is strictly a guess. It is not even an intelligent guess, with the greatest of respect to Dr. McAllister. It is the only possible guess she could make to give the committee some figures. It is the only possible assumption she could make to give the committee some figures.

If we are looking at the issue of systemic discrimination against women and if we are looking at groups that are 50 per cent male and 50 per cent female, how can you say there is systemic discrimination there? How can you say the systemic discrimination there is the same as the systemic discrimination in a group where 90 per cent are female or 70 per cent are female? If we are looking at a group where only 20 per cent of the group is female, how can you say the systemic discrimination in that mixed group is the same as in a group where 70 per cent are female?

You cannot make that assumption. There are no statistics or facts to enable you to come to an educated guess to bring out these figures. That should be completely disregarded. It was just an attempt on her part to meet the committee's request; she had to make an assumption on that.

Again I say, look back at the definition of what a predominantly female group of jobs is. Our definition is more comprehensive than your definition.

It includes your definition. Above and beyond that, it bears an automatic inclusion of those women who are in groups of jobs that are 60 per cent female.

Ms. Gigantes: What a dumb question you asked, Bob.

Mr. Gillies: Mr. Chairman--

Mr. Chairman: Mr. Gillies and then Ms. Gigantes.

Mr. Gillies: First of all, I should apologize to Dr. McAllister on Mr. Polsinelli's behalf. I thought the work she did was most intelligent, and I am sure he did not mean it that way. But I am confused; we have had this before us--

Mr. Polsinelli: At this point, perhaps Dr. McAllister can explain her assumption.

Ms. Gigantes: She did before. Were you here when she did?

Mr. Gillies: She explained it very well, and I thought--

Mr. Polsinelli: Perhaps she can--

Mr. Gillies: Mr. Chairman, perhaps Mr. Polsinelli would restrain himself. He is particularly chatty today when other members have the floor, which is not his usual predisposition.

Mr. Polsinelli: No.

Mr. Chairman: I ask Mr. Polsinelli to show his usual level of restraint. Mr. Gillies has the floor.

Mr. Gillies: I thought the work Dr. McAllister did in response to a request from the committee regarding the inclusion of the mixed group of jobs as proposed by the two opposition parties clearly indicated that to include these people increased both the coverage and the cost of the bill. I thought that was one of the criticisms being levelled at us by the Liberal Party, and we accept and acknowledge that it increased the cost of the bill. Now Mr. Polsinelli is trying to tell us that is not really the case because these people are caught anyway. Which is it?

Mr. Callahan: Could I correct that, Mr. Chairman? It was not a criticism; it was to get that information to see what we were talking about.

Mr. Polsinelli: The cost of the bill was increased by extending it to municipalities and school boards.

Ms. Gigantes: Dr. McAllister explained very well the premises on which she made the estimates, which the Liberal Party requested and then has the gall to turn around and call stupid.

Mr. Polsinelli: I did not say "stupid."

Ms. Gigantes: I have forgotten the exact words you used, but I thought they were rather ingenious. I would have thought you would have been fully appreciative of them, because I thought you were going to try to convince us the whole deal was too expensive and we did not want to do it.



What you are encountering, Mr. Polsinelli, is a very firm conviction on the part of at least two parties involved in this committee work that the 60 per cent and 70 per cent tests provided in Bill 105 would become a maximum and that to have any other inclusions of coverage would be extremely difficult.

What we are saying in what we have done--I remind you, we have already done it, and you are not going to get unanimous consent from us now to go back and look at it again. Everything you put so ably in your weak case is quite irrelevant to the decision; what we are now called upon to look at is following through logically on the decisions we made yesterday in full conscience and consciousness.

16:50

Mr. Chairman: Any other comments? I sort of assumed there might be.

Ms. Gigantes: Is there a limit to this?

Mr. Chairman: Not really, unless some member of the committee calls the vote--

Ms. Gigantes: We may wish to call the vote.

Mr. Chairman: --but Mr. Polsinelli had his hand up.

Mr. Polsinelli: No matter how my comments may be distorted by the opposition parties, I did not say Dr. McAllister was stupid. On the contrary, she is brilliant lady.

Ms. Gigantes: You said she did a stupid thing.

Mr. Polsinelli: I did not say that either. You said that. I did not say it.

Ms. Gigantes: The question--and you must remember--

Mr. Chairman: In the interest of saving time on this committee--

Mr. Polsinelli: I did not say that. I challenge you to dig up Hansard--

Mr. Gillies: I heard you say she is a brilliant lady who does stupid things. I heard you say it.

Mr. Polsinelli: I challenge you to read that part of Hansard--

Mr. Chairman: Mr. Polsinelli, in the interest of time, could you tell us exactly how you feel about the good doctor?

Interjection: How do you feel yourself?

Mr. Chairman: Your silence is deafening, sir.

Mr. Polsinelli: Will the PC members of this committee please regain their composure?

Ms. Gigantes: Unless there are people besides Mr. Polsinelli who wish to contribute to the discussion on this, why do we not have a vote on it?

Mr. Chairman: I am ready to move.

Mr. Polsinelli: I wanted to ask a question of Dr. McAllister, Mr. Chairman.

Mr. Chairman: No. You have already lost your turn. I gave you the floor, and apparently you were not interested in using it.

Mr. Polsinelli: I was, but there was so much heckling from the opposition parties.

Mr. Chairman: I am going to Ms. Hart, who has been waiting patiently to get the floor. Could the other members of the committee restrain themselves, please, while I go to Ms. Hart?

Ms. Hart: Thank you--

Mr. Polsinelli: This whole bill is becoming a joke anyway.

Ms. Hart: My concern about this section--

Ms. Fish: On a point of order, Mr. Chairman: Did I just hear the parliamentary assistant say, "This whole bill is a joke anyway"?

Mr. Polsinelli: No, "is becoming a joke anyway."

Ms. Fish: Oh, "is becoming a joke." I see. Just so we understand the parliamentary assistant is not authorized to carry this legislation because he thinks pay equity for women in the broad public sector is a joke.

Mr. Polsinelli: No, no. Don't twist my words.

Ms. Fish: That is exactly what I heard. There is no twisting whatsoever.

Mr. Polsinelli: Don't twist my words.

Mr. Chairman: Perhaps Ms. Fish and Mr. Polsinelli would like to discuss this in the other room to determine exactly what it was that each of them said. I am trying to give Ms. Hart a reasonable opportunity to get on the floor.

Ms. Hart: I am hearing something being said by this committee that I am quite uncomfortable with; that is, that the government is not prepared to go along with these amendments because of the cost. I certainly speak for myself as a government member when I say it is not the cost that concerns me about these amendments; it is the changing of the whole focus of the bill, the whole procedure for bringing about pay equity.

I focus particularly on this section because my concern is that there does not seem to be any assistance either for employers or for women employees in how they achieve pay equity. There is no mechanism, and there are no provisions that say, "This is how we consider that pay equity should be achieved."

There are no comparisons set out as examples or given as guidelines for employers and employees. That may be all right in certain types of shops that are highly organized at the moment, but I have real concerns for many parts of the broad public sector that are not so highly organized.



I appreciate Ms. Gigantes has said to us that the employer can draft it for himself or herself, but I would be a lot happier if there were some guidelines within the legislation itself so it is not a totally open ball game, if you will.

Some may be successful in achieving a high level of pay equity in comparison with highly paid male groups such as the probation officers employed by the Solicitor General. Others may be much less successful in achieving any kind of equity. I am concerned about that, and I wanted to raise that and put it on the record.

Mr. Gillies: One of the reasons I am attracted to the NDP amendments to sections 5 through 16, with caveats which I will express along the way--in fact, we have a couple of significant caveats to put forward--is that, having read them and the bill very carefully, I believe the mechanism being proposed by Ms. Gigantes is simpler.

One of the concerns expressed in this committee by a number of us--Mr. Callahan notably--is that we want to put together a bill that is simple enough and understandable enough that it does not scare the dickens out of the private sector in terms of what is coming for it. I am willing to listen to argument to the contrary, but I have a hunch the substantive amendments to the mechanism being proposed by Ms. Gigantes come closer to meeting that goal than the bill as drafted.

That is one of the reasons I suggested we look at this package in total now. As a committee, if we come to the conclusion that it does not cut it, we can go back to the bill and move the other amendments, which are, if you will, more housekeeping amendments to the government bill.

Ms. Gigantes: Ms. Hart, it is not really legitimate for me to suggest that when you have a concern with the removal of section 5 of the bill, you should be looking at my amendments to sections 7, 8, 9 and forward, but in a sense that is the answer.

I want to give you one clear idea of why the simpler method is going to work. What we are calling upon employers to do is to set aside a certain percentage of total payroll each year; that is not to be used for any other purpose but the achievement of equal pay for work of equal value. Once you say that, it is not to the benefit of the employer not to use it.

Further, after a year or two of going through the process of bargaining the equal pay plan in a unionized shop or of establishing one in a nonunionized work place, and each year providing the dedicated payroll amount to overcoming the wage gap, there is still a mechanism left open for a person, either male or female, to come forward to the commission, or to have a third party come forward to the commission on his or her behalf or on behalf of a group, and say, "This plan and its implementation have not achieved," for this group or this individual, "equal pay for work of equal value." That will be reviewed by the commission.

I do think there is anything essentially different about what we are proposing from the scheme as set out in the quite complex mechanisms advanced in Bill 105 from section 7 right over to the beginning of part III and through parts III, IV, V and VI. Essentially the same mechanisms are used in unionized shops and nonorganized bargaining places. All you have done in all those sections is have a hideously complex process, which is going to confuse everybody who is involved in it all along the way.

What we are saying is, let us set out, right from the start and on as wide a basis as possible within each work place, an equal pay plan that is comprehensible to people. They shall be provided with the background information on which it was based, and they shall be provided with the plan. Once the plan is in operation, a person shall be able to say to the commission, "I need your help to investigate my sense that equal pay for work of equal value is not happening in this establishment for me or for the group in which I work."

That is as likely to achieve the goal of equal pay for work of equal value as any other method. Further, I think it is more likely to achieve equal pay for work of equal value than the mechanisms we have set out in this legislation to achieve something called pay equity, which is then defined as planning process.

17:00

Mr. Callahan: I have similar concerns to those of my colleague Ms. Hart, in that once you take out pay equity or equal pay for work of equal value--call it what you will--I would be at a loss to try to explain to any persons affected by this legislation how they arrive at a plan.

Ms. Gigantes: Nobody asked you to do it.

Mr. Callahan: No, but someone has to do it. As near as I can figure, you are anticipating that people are just going to sit down and come up with this, or some great field of experts is going to be generated to make those decisions. That gives me cause for concern, as I mentioned before, and Mr. Gillies has reiterated it.

Although I am sure you will not accept it, maybe that is why the effort was put forward to implement it a little bit ahead of the others, to see how it worked, to iron out the wrinkles then. What we are doing here is trying to iron out the wrinkles by a series of amendments from yourselves and the Conservative party and, I suppose, even ourselves.

We may be spending an awful lot of time on a bill that is worthy of a lot of time--it is certainly a principle that is worthy of it--and coming up short, or we may be coming up with something which we will not find out whether it works until it is in place, when it may be a little late to tinker with it.

I really have difficulty with this. I have sincere difficulty with it. I express that because I would hate to be in a position to say later on, "I told you so." But I feel that is what we are doing.

I know that we, as members of the Legislature, try to put together legislation that makes sense, but I have a very real concern that, by a tinker here and a tinker there, when we read the bill it may make no sense at all, in which case we have achieved nothing; we have delayed the process even more. I hope that does not happen, but it may very well be the result.

Mr. Chairman: All those in favour of Ms. Gigantes's amendment to sections 5 and 6? Opposed?

Motion agreed to.

Mr. Chairman: We have effectively dealt with section 6 as well because by passing that motion you have deleted section 6.



Mr. Callahan: As a point of information, what is happening with reference to the Conservative amendment to section 5? Is that forgotten? Is it gone?

Mr. Gillies: Yes. I will not be proposing our amendment to section 5.

Mr. Callahan: Are we now at clause 5(2)(a)?

Mr. Chairman: I need a cover-all motion on this. I was just trying to get some direction as to whether I had to mention section 6 as well, but apparently the appropriate question now is, "Shall section 5, as amended, now carry?" All in favour?

Mr. Callahan: On a point of order, Mr. Chairman: How do we get clause 5(2)(a) in there? Is not that part of section 5?

Ms. Gigantes: You cannot have a point of order in the middle of a vote.

Mr. Callahan: I am asking, if you have the vote on that now, does it close the door--

Mr. Chairman: Unless you have unanimous consent to reopen. I thought we covered that ground--

Mr. Callahan: That is why I asked. Where is Mr. Polsinelli? I want to know whether we are dealing with clause 5(2)(a).

Mr. Chairman: You are dealing with section 5. Clause 5(2)(a) will not be discussed unless it is reopened.

All those in favour? Opposed?

Section 5, as amended, agreed to.

On section 7:

Mr. Chairman: I presume the government amendment, which I am prepared to take first, is not going to be moved. I do not want to make that assumption without comment.

Ms. Hart: Mr. Chairman, you said we were going to have a break. Can we have the break now?

Mr. Chairman: All right. We will take a 10-minute break, if that is acceptable. We will come back and start dealing with section 7. Moving right along.

The committee recessed at 5:06 p.m.

17:25

On sections 7 and 8:

Mr. Chairman: Will the committee please come to order? We are on section 7. I again call for the government to make a decision with respect to its amendment on section 7. If they do not wish to move that amendment, I will move on to the amendment of the Conservative party.

Mr. Gillies: Before the break--

Mr. Polsinelli: You did not support your own amendment.

Mr. Gillies: We stood down our amendment.

Mr. Polsinelli: In favour of the NDP package.

Mr. Gillies: Which I am also going to do with section 7. I might say that while we support the mechanism that is being proposed here--I hope this is not the end of the new accord--our party has concern about the economic implications of the three per cent lump sum. After due consideration, we feel that the three per cent lump sum requirement, at one time, would increase the cost of the bill in the first instance considerably. While I am prepared to listen to argument, I believe our party will have to move an amendment to the amendment ensuring a one per cent adjustment per year as proposed in the government bill.

Mr. Chairman: Ms. Gigantes moves that sections 7 and 8 of the bill be struck out and the following substituted therefor:

"7. (1) An equal pay plan for an establishment shall be in writing and,

"(a) shall provide for the development of equal pay in the establishment;

"(b) shall provide for an examination of all existing classification or compensation systems used in the establishment for gender-based discrimination;

"(c) shall identify predominantly female jobs and predominantly male jobs in the establishment according to current and historical incumbency, stereotypes of fields of work and other factors that may be applicable;

"(d) shall provide that a minimum of three per cent of total payroll of the previous year shall be set aside for each year of the plan in an equal pay fund established by the employer and allocated directly to the achievement of equal pay;

"(e) shall provide for an initial lump sum reckoning to be paid to the lowest paid employees in predominantly female jobs in the establishment immediately following the filing of the plan with the commission or the establishment of the plan by it;

"(f) shall provide for the adjustments in rates of compensation that are necessary to achieve equal pay; and,

"(g) shall include information on rates of pay and occupational categories in the establishment and the numbers of women and men in each category.

"(2) In establishments where there are no predominantly male jobs with which to compare the compensation in predominantly female jobs, the commission, upon the application of the employer, an employee or group of employees, a bargaining agent or a third party, shall determine the basis on which comparisons are to be made.

"(3) Where determination is made under subsection 2, the equal pay plan for the establishment shall be established and implemented under part III on the basis of the commission's determination.



"(4) In a unionized establishment, the examination under clause 1(b) shall include comparisons between jobs in the bargaining units and jobs outside the bargaining units.

17:30

"8. (1) The following provisions apply to the equal pay fund referred to in clause 7(1)(d):

"1. Any money received by an employer in respect of the equal pay fund shall be paid into an interest-bearing account and shall be held by the employer in trust for the employees who are entitled to receive adjustments to compensation under this act.

"2. Interest paid in respect of the equal pay fund shall be credited to the fund and shall be applied to the achievement of equal pay.

"3. Money in the equal pay fund shall be paid by the employer separately and in addition to the general wage increase and, in a unionized establishment, over and above negotiated wage increases.

"(2) The following provisions apply to the initial lump sum reckoning referred to in clause 7(1)(e):

"1. The total amount of the lump sum reckoning shall be three per cent of the total payroll calculated from the 11th day of February, 1986, and ending when the equal pay plan is filed with the commission or established by it.

"2. The lump sum reckoning shall be paid in the form of a lump sum increase to the annual salary or wage of each recipient."

Ms. Gigantes: These two new sections replace sections in Bill 105. The old section 7 provides for the elements of what is called a pay equity plan, which you will recollect we have put aside in favour of the object of achieving not pay equity plans, but equal pay for work of equal value. We are calling the plans, which shall be created for that purpose, equal pay plans rather than pay equity plans to make a clear distinction between the approach in the bill and the approach we are proposing here.

In section 8, which we have also proposed to replace with a new section 8, we have removed the exemptions and the exemptions to the exemptions, which are set out in Bill 105.

We have attempted to set out in the proposed sections 7 and 8 the way in which equal pay plans shall be established to make it clear that the objective in the establishment of the plans is the achievement of equal pay for work of equal value, that the employer shall be required to set aside a set amount of payroll on an annual basis for the achievement of that goal, that cross-comparisons will be permitted and shall be undertaken, and that the moneys held aside by the employer shall accrue interest, which also shall be added to the designated fund for the achievement of equal pay. We have proposed that there shall be an initial lump sum payment calculated on the base starting February 11, the day that Bill 105 was tabled in the Legislature.

We feel quite strongly that it is important for the women who will benefit under this legislation to receive a benefit as quickly as possible. We have been waiting for the implementation of equal pay for work of equal value

in Ontario for a long time. We feel it is very important that women receive a benefit as soon as possible. We suggest that date should be the date of the filing of the plan so that we can establish through that plan who are the employees who should benefit from this legislation, and further, who are the employees who are lowest paid and who will benefit first from a lump sum payment.

Further on that, we will provide that the plan shall continue payments based on a designated amount of payroll set aside by the employer each year until equal pay for work of equal value has been achieved. Each payment shall be made on an annual basis and shall be made in addition to the regular wage increases. There may well be questions from members of the committee.

The Vice-Chairman: I have an indication Mr. Callahan wishes to speak or put questions.

Mr. Callahan: Actually, I want to ask a question of the doctor. It is for information. Was the memorandum that you gave us premised on one per cent a year payroll?

Dr. McAllister: No. It is not premised on any particular system for payout. It is premised, however, on a four per cent of total payroll pay equity gap existing or being required, under Bill 105 unamended, to achieve pay equity.

Mr. Gillies: I am sorry. Can I ask for a point of clarification from Dr. McAllister? These cost projections you have given us are not annualized but are rather a total figure of the four per cent as contemplated by the bill?

Dr. McAllister: That is right. It would be the ongoing annual cost once pay equity has been achieved. I have made no assumptions about how you get to that. It is the \$88 million that we have referred to in discussions about the four per cent gap.

Mr. Gillies: That clears up something that was bothering me. Your projection of total cost in the first year could be divided by four as a reflection of approximately one per cent in the first year if that feature remains in the bill.

Dr. McAllister: No, because we now have more than four per cent of total payroll being required. Once you add additional employees to require pay equity adjustments to the bill, you no longer require four per cent of payroll. I do not know the proportion, but you have increased your cost by 40 per cent, so it is no longer four per cent of total payroll. It would no longer be--

Ms. Gigantes: May I ask a supplementary question?

Mr. Gillies: I am not sure I understood your last point, but it may be cleared up by this.

Ms. Gigantes: It is one that has come to my mind, having looked at the information Dr. McAllister provided to us. What you have done is to take the estimates that have been made for the public service, as would be effected by Bill 105, and extended those as well as you can--

Dr. McAllister: I have extrapolated from them.



Ms. Gigantes: You have extrapolated them to the full public sector, but the conditions in one may not be directly comparable to another. Even given Bill 105, just as it is set out, they may not be directly comparable. In Bill 105, we are dealing principally with one large employer, the Public Service Commission, and the rates of pay and the comparability of workers within Bill 105 within the public service may be relatively different from those we encounter in the public sector. In the private sector, I assume we would have a great many more people who would be doing what might be loosely categorized as blue collar jobs as opposed to white collar jobs compared to the public service of Ontario. The comparability or your ability to extrapolate is limited by the nature of the workers who will be covered.

Dr. McAllister: It is certainly the case that the characteristics of an organization and the nature of employment vary and will affect the pay equity adjustments that are available. Having said that, I have to note for the committee that there is no implementation in the broader public sector in other jurisdictions that we can look to for other data to use in extrapolating costs.

Ms. Gigantes: I understand.

Dr. McAllister: That is why I have had to extrapolate from the narrow public service experience.

Ms. Gigantes: I think you have done very well. We have to take those figures as a very rough and ready estimate, as you have indicated.

Mr. Callahan: If I read you correctly, the reason for the three per cent is to speed up the process.

Ms. Gigantes: That is right. What we are dealing with is a finite problem at some stage. There is a wage gap. We know there is a wage gap. We do not know what the wage gap is going to be in total. We do not know what it is going to be in this work group and this establishment compared to another. We are going to have to see in each and look at the total. That is the fact of the matter. It would be under Bill 105. We have estimates under Bill 105 and we can make rough and ready estimates under the proposals that are being made now by way of amendment.

17:40

The fact is that there is a finite gap to be covered and what one suggests in proposing a three per cent contribution of payroll for a year is that we will address the problem quicker. We all know that the goal we hope to achieve in the end is equal pay for work of equal value. Whether you do it at a one per cent march or a three per cent march does not make a difference to what your total payroll costs are going to be in the end, but it does mean that you are going to achieve it faster one way rather than the other.

Mr. Callahan: My next question is for legislative counsel. I would like this clarified. Section 29 provides, "The moneys required for the purposes of this act shall, until the 31st day of March, 1987, be paid out of the consolidated revenue fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature." Do municipalities, school boards and hospitals receive moneys appropriated by the Legislature?

Mr. Revell: To the extent that they receive grant moneys, yes, they receive moneys appropriated by the assembly.

Mr. Callahan: It says "appropriated therefor by the Legislature." You are saying the grant moneys they receive would be to pay the salaries of employees of municipalities.

Mr. Revell: No. Normally, the grant money they would receive, for example, would be under the Ontario Unconditional Grants Act, which is an ongoing program.

Mr. Callahan: But not to be used for salaries.

Mr. Revell: Normally, no. Ontario, to the best of my knowledge, does not pay the salary allocations, etc., of the municipalities. The municipalities would pay those through their--

Mr. Callahan: Out of the mill rate.

Mr. Revell: --taxing and out of their general revenues.

Mr. Callahan: Section 29 gives me some concern if that is a correct interpretation. I can understand your reason for wanting to expedite the matter, but now that the matter has been brought into the broad public sector, we are talking about municipalities, school boards, hospitals and all those good things. The setting of budgets varies from municipality to municipality. We used to set ours in January, February, March, April. They would have to budget or deficit finance for that. Is that a fair observation? Can anybody answer that?

The Vice-Chairman: I am not sure whether there is an answer that staff propose to give, but I do know there is a supplementary question Mrs. Grier wanted to ask on the grants program.

Mrs. Grier: I was curious about the explanation given by legislative counsel. Does the answer mean to imply that a municipality that receives an unconditional grant cannot expend that grant for enhancing its payroll if it wishes to? Surely, that grant goes into the general revenue of the municipality as does the money raised from property tax and the municipality then decides what it wants to do with it.

Mr. Revell: It depends on the nature of the grants. There is more than one grant program that municipalities receive money from. Some of those moneys are specifically earmarked and must be used for a particular project. For example, a grant for a railroad separation would have to be used--

Mrs. Grier: It was the unconditional grants that your explanation--

Mr. Revell: The unconditional grants could be used for general revenue purposes.

Mrs. Grier: Therefore, there is no reason why provincial moneys could not be added to the grants previously given to municipalities to aid a municipality to implement pay equity.

Mr. Revell: I am not sure I understand the question.

Mrs. Grier: Is there anything to prevent the provincial government from increasing the grants to municipalities to enable municipalities to meet the objectives of this legislation?



Mr. Revell: Not the way this legislation is drafted at the present moment.

Mr. Gillies: Procedurally, I wonder whether it would make more sense if I move my amendment to the amendment so it can be debated and dealt with and then the substantive amendment--

The Vice-Chairman: You can so do if you wish.

Mr. Gillies: This is an amendment to the amendment, sections 7 and 8.

The Vice-Chairman: Mr. Gillies moves that the number "3" in the first line of clause 7(1)(d) be struck out and the number "1" be substituted therefor, and similarly that the number "3" in the second line of paragraph 8(2)1 be struck out and the number "1" be substituted therefor.

Mr. Callahan: Excuse me. I do not have this amendment.

Mr. Gillies: It is in a written form, which I can provide for you.

We are moving this subamendment because of the concern we have about the financial implications of the three per cent lump payment. I want to say, on behalf of our party, that we like every other feature I can see in the amendment proposed by Ms. Gigantes. I like the method she proposes for the determination of the contents of the plan. We like the method you propose for determining comparability. On the striking of the fund we have no disagreement whatsoever.

The concern we have, though, is about requiring especially those organizations in the broad public sector such as smaller municipalities, hospital boards and so on to set aside three per cent of budgeted payroll. I suppose in an ideal world we would think it good; it does help speed up the process somewhat. But in the real of world of tight budgets and of municipalities in particular not being allowed to deficit finance, we are worried about the implications of the three per cent, particularly taken in the context of the opposition party's shared wish that the legislation be retroactive to the February 11, 1986.

With all of those points in mind, I hope that members might take under advisement our suggestion of one per cent per year during the phase-in. It perhaps does not do what we want as quickly as we want in the ideal sense, but we feel it is a responsible yardstick in view of the realities. Apart from that, we have no hesitation in supporting the amendment if the subamendment is accepted.

The Vice-Chairman: Thank you, Mr. Gillies. Mr. Callahan, may I take a moment to ensure that you have the material in front of you?

Mr. Callahan: I do not; I thought I did. I have the New Democratic Party one, but I do not have Mr. Gillies's amendment.

The Vice-Chairman: Perhaps I can assist the committee members at this point, because I did overhear a side conversation between Mr. Cooke and Mr. Callahan on the materials. Just so that we are clear, what we have in front of us are three pages of amendments that are headed "NDP" and deal with sections 7 and 8, which Ms. Gigantes read through.

Mr. Callahan: I have that.

The Vice-Chairman: Mr. Gillies has given us orally--and there is one copy in writing, which the clerk is going to photocopy--an amendment to that motion that would have the effect of deleting three per cent and inserting one per cent in two places in Ms. Gigantes's motion. The two places are on page 1, clause 7(1)(d) in the first line where you see three per cent, and on page 3, paragraph 8(2)1 in the second line where it reads "reckoning shall be 3 per cent of the total payroll." It will read: "reckoning shall be 1 per cent"; that is the proposed amendment. The actual wording to effect that is being photocopied by the clerk at this time, but that gives you an idea of the substance that is in front of you.

If everybody is reasonably clear on that, then we can proceed.

Ms. Gigantes: First, I am going to address the concern that Mr. Gillies has expressed on behalf of the organizations and the institutions that would be legislatively part of this act once it is passed and proclaimed. I will draw your attention to section 29 of the bill. We have proposed no amendment to section 29. It reads:

"The moneys required for the purposes of this act shall, until the 31st day of March, 1987, be paid out of the consolidated revenue fund," in other words, the existing budget, "and thereafter shall be paid out of the moneys appropriated therefor by the Legislature."

17:50

I would expect that under the second part of this clause we would not be dealing with the question of municipalities taking an allocation out of their general provincial grants--what is the legal term? unconditional grants--but rather that, after March 31, 1987, a special appropriation would be undertaken by the Legislature that would provide for the cost of equal pay for those organizations and institutions that are covered by this bill.

I just want to make it very clear that it is not our intent to provide, either now or in the future, that the public sector institutions and employers who will be covered by this bill and become participants in carrying out equal pay for work of equal value under this legislation would bear the burden of the cost. We do not think that is how it should happen. We think the source of equal pay for work of equal value in Ontario should come, as far as possible, from a progressive income tax base.

While our provincial revenue-gathering system is far from totally progressive, it is much better, in our view, as a fair source of moneys, than the municipal property tax. Therefore, we would leave section 29 of Bill 105 as it stands and accept that there should be a provincial financial responsibility for the public sector as it exists in Ontario.

It was the provincial government that, as it were, benefited when there were wage restraints in Ontario, and we would expect that the same kind of reasoning would apply to a cost that this provincial government is assuming because it recognizes that it is not fair to have unequal pay for work of equal value.

Second, I would like to discuss the question of the three per cent lump sum as opposed to one per cent, and indeed, the question of one per cent as opposed to three per cent in the annual dedication of payroll money.

If one thinks about a process that may take two, three, four years to become fully adjusted when we are shifting the pay levels of groups of people



who have been undervalued in their work and moving them in relation to other groups of people who remain at a constant level of pay, in relative terms, then we know each year we are going to be dealing with general wage increases of a certain amount.

Let us assume, for example, that because next year's allocations to municipalities are five per cent, that everybody who worked for a municipality got a five per cent wage increase. Wage increases in the broad public sector tend to occur that way, give or take a couple of percentage decimals here or there.

Our concern is that if you implement the catch-up slowly, the speed with which the catch-up occurs is retarded as general wage levels rise. We are saying in this legislation that we do not want to hold back men's wages; we do not want to hold back the wages of groups that are not receiving benefits; we do not want to cut their wages to achieve the purposes that we are looking to achieve here. We want to advance the wages of those women and of those men who have been doing women's work and whose work has been undervalued.

If we are going to do that in a situation where we can expect at least two years, according to the Treasurer, during which the economy of Ontario is going to be looking pretty good, and we can expect a general wage increase, we are going to have two forces at work on the pay gap. One is our legislation, which says we are going to increase the undervalued work groups by X amount. But at the same time, there is going to be a widening of that pay gap as a result of the factor that is the general wage increase, so that you have two competing forces that are playing about the wage gap.

This is why I feel that, the earliest we can, we should provide a rather larger amount. It would be more reasonable to suggest that we limit the annual rate of payroll increase than that we limit the lump sum, because the more quickly it is done, the more quickly it is done. If we do more first, we have to do less later. If we do less first, then the job we have to do later in terms of these competing forces that are going to play about the wage gap and our ability to achieve under this legislation equal pay for work of equal value, is going to provide a real strain on the ability of this legislation to address it within any time frame that we think is reasonable.

We do not want this process to go on for 10 years. We do not want equal pay plans working at a level of one per cent to be forever caught in the strain and never really get there, if you see what I mean. At least if we give it an upfront boost, then we have given the whole process a head start that makes sense in the context in which the real world operates.

I would ask Mr. Gillies to consider that. If you are concerned about the three per cent lump sum and the three per cent annual increase, perhaps it might be better to think of the three per cent lump sum as something that is desirable and then think about amending the one per cent annual increase, or amending the three per cent annual increase, which we will propose later on.

Mr. Callahan: I understand your reason for wanting to do it, and I suppose that in a pure and perfect world it might be possible. But I really think as well that what we are doing as well is sending a significant message to the next stage, and it is a very difficult message.

I would like to go back to those conditional grants. Perhaps I can ask legislative counsel whether he can tell us how they are fixed. Does each municipality get the same amount?

Mr. Revell: No. In choosing unconditional grants, I was giving one example of where moneys that are allocated by the provincial Legislature end up in the hands of municipalities. I was not saying anything about particular amounts.

As to the process that goes on in the Ministry of Municipal Affairs in determining how grants are fixed, there is a regulation under the Ontario Unconditional Grants Act that deals with how municipalities determine what they are entitled to. It is not the same in dollar figures for each municipality, I do know that. I thought the question related only to the one specific issue, and that is the one that I was answering: Are there any examples of municipalities receiving money?

Mr. Callahan: Do school boards get unconditional grants?

Mr. Revell: To the best of my knowledge, they, too, receive grants from the province of Ontario, but those would be under the Education Act. They would not be unconditional grants under the Ontario Unconditional Grants Act.

Ms. Gigantes: May I make a procedural suggestion? I would like to suggest that we consider an extra meeting next week at a different time from our normal schedule so that we can get on with this work. I am wondering whether we can determine whether we are ready for a vote on the amendment to the subamendment, because it would be useful to proceed with that if we can. If not, I would like to place a motion.

The Vice-Chairman: I am informally getting some indication that there are at least two other members of the committee who wish to speak on the matter. I would think that with three minutes to go, that likely means we are not in a position to vote.

Ms. Gigantes: May I make a procedural proposal?

The Vice-Chairman: Yes. Ms. Gigantes moves that the committee meet next Wednesday evening.

Ms. Gigantes: Would that be possible for members of the committee? It seems to me that to let a whole week go by without--

Mr. Polsinelli: That is out of order.

Ms. Gigantes: It is not out of order.

Mr. Polsinelli: Yes, it was. The chairman ruled that last week.

The Vice-Chairman: Excuse me, members of the committee, I think probably we would request unanimous consent to enable Ms. Gigantes to shift from clause-by-clause discussion to a procedural motion. Is there unanimous consent to do that?

Interjection: No.

The Vice-Chairman: No, there is not. Thank you.

Is there further discussion on this clause this evening, as we are coming up to time?

Ms. Hart: I have quite a number of points I want to make. Perhaps I should move to adjourn.



The Vice-Chairman: A motion to adjourn is before us. All those in favour? Opposed? That carries.

The committee will stand adjourned until following routine proceedings, Monday, November 17.

The committee adjourned at 6:01 p.m.





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

MONDAY, NOVEMBER 17, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)  
VICE-CHAIRMAN: Fish, S. A. (St. George PC)  
Charlton, B. A. (Hamilton Mountain NDP)  
Cooke, D. R. (Kitchener L)  
Gigantes, E. (Ottawa Centre NDP)  
Hart, C. E. (York East L)  
O'Connor, T. P. (Oakville PC)  
Partington, P. (Brock PC)  
Polsinelli, C. (Yorkview L)  
Ramsay, D. (Timiskaming L)  
Rowe, W. E. (Simcoe Centre PC)

Substitutions:

Gillies, P. A. (Brantford PC) for Ms. Fish  
McLean, A. K. (Simcoe East PC) for Mr. Rowe

Clerk: Mellor, L.

Staff:

Evans, C. A., Research Officer, Legislative Research Service  
Revell, D. L., Legislative Counsel

Witness:

From the Ministry of Labour:

Wrye, Hon. W. M., Minister of Labour (Windsor-Sandwich L)



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, November 17, 1986

The committee met at 3:36 p.m. in room 151.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: I have a few brief comments to make before we get to section 7 and section 8. The course of that discussion was being carried by Ms. Gigantes, and I will turn the floor over to her since we interrupted her in midstream at the last meeting. There has been a bit of a delay between the last meeting and this one; so I want to bring you up to date on a few points.

First of all, the Minister of Labour (Mr. Wrye) will not be available for Tuesday, November 25.

Mr. Polsinelli: That never stopped us before. Why should it stop us now?

Mr. Chairman: You are not inferring that we do not require the presence of the minister here. I ask that by way of a question. In any event, you can do with that as you will, but he will not be here on November 25.

In terms of the legislative research staff, we have a replacement. Her name is Catherine Evans, and she is sitting immediately to my left. Ms. Evans will be joining us for the next few days, I understand. Is it for the duration of the week?

Ms. Evans: Just for today and tomorrow.

Mr. Chairman: You will enjoy it. We welcome you aboard this committee.

Mr. Polsinelli: You have my condolences.

Mr. Chairman: There was a request for a subcommittee meeting of our committee. Apparently, we were all set to have that meeting this morning and it had to be rescheduled as a result of conflicting commitments that members had. It has now been rescheduled for six o'clock tomorrow.

Mr. Charlton: Is that in the morning or the evening?

Mr. Chairman: That is a good question. I know how eager this committee is, but as a quick guess it is probably in the evening.

The fourth item has to do with an informal question I had with regard to procedural matters before this committee and the amendment placed by Mr. Gillies, who is not here. I consulted with the best legal minds I could find in the course of the past two or three minutes; that is not a reflection on the legal minds I came in contact with.

Mr. Polsinelli: You did not talk to me.

Mr. D. R. Cooke: You did not talk to me.

Mr. Chairman: There is a message in there for both of you.

In any event, I consulted with some of the folks whose knowledge of the rules of order is far superior to mine, and they indicate that the amendment remains on the floor. It was legally placed. Ms. Gigantes and others can speak to the amendment and decide what they wish to do with it. If Mr. Gillies is not here at the time of the vote, we will simply carry on with the vote. The amendment still stands. The question was whether the amendment has to be withdrawn, and it does not. It has been appropriately placed.

Are there any questions before we start regarding procedural matters or any other items of business that I raised? If not, and if Ms. Gigantes has completed her conversation with her colleague, we will turn the floor over to Ms. Gigantes.

On sections 7 and 8:

Ms. Gigantes: It may be that because this is Mr. Gillies's amendment, we will want to consider, after having gone through a discussion on it, whether we will allow him time to speak again to the amendment before we actually get to a vote on it. In the meantime, I am very pleased to be able to go ahead and discuss the amendment.

When we left off last time, I was suggesting that instead of the amendment to section 7 that Mr. Gillies has proposed, he might consider no amendment to section 7 and an amendment instead to section 8. In other words, I was proposing that he might consider approving clause 7(1)(d) as it is in the New Democratic Party amendments and retaining a three per cent--I have this backwards again.

Section 7 deals with the annual dedication of payroll to the achievement of equal pay for work of equal value. Section 8 deals with the setting up of the lump sum reckoning, an upfront payment calculated from February 11, 1986. I suggest to Mr. Gillies that if he feels he must amend section 7--in other words, amend our proposal for a three per cent dedication of payroll on an annual basis--he may wish to retain the three per cent upfront payment to our lump sum reckoning, which we have included in paragraph 8(2)(1).

In the meantime, because we have had a span of several days to consider these propositions further, I have sat down with our research staff and worked out information that may be useful to members of the committee in their consideration of this matter. I think each of you has received a page entitled Eliminating the Wage Gap. I should provide some information to you about precisely what is involved in the calculations you see before you. We are assuming we have a work place in which there are comparable jobs. These may not be all the jobs involved in the work place, but--

Mr. Chairman: We are going to have a problem picking up your voice while you are standing away from the microphone. Is it possible for us to get an easel somewhere and a roving microphone? This is not going to come across all that well and we may have difficulty with respect to it.

Mr. O'Connor: Why not have her sit over there?



Mr. Chairman: That is a possibility. We can have Ms. Gigantes sit at the front and put that on a chair. If you can sit down while you are talking, that may cover it. That is a rather fine suggestion from Mr. O'Connor, I might add.

Ms. Gigantes: The bottom is going to be difficult to see. When we get to the bottom, I will lift it up.

Members of the committee will recollect that one of the concerns I expressed about a one per cent lump sum payment combined with an annual dedication of payroll at the level of one per cent was that as annual general wage increases go on progressively over the years in the normal course of events in a work place, the one per cent catch-up provided by the one per cent dedication of funds from payroll is not going to provide much of a counterbalance to the effect of a widening wage gap created by the fact that general wage increases will be larger than one per cent.

If we take a work place in which, for the sake of discussion, we assume there are 15 women working at jobs now valued at \$14,000 a year and, further, that there are 10 men doing work of equal value, which has been worked out by employers and employees or through an employer's equal pay plan, then we can establish that in 1986, for example, there will be a wage gap of \$3,000 between those 15 women and 10 men on an individual basis. At a wage increase of four per cent--and we again make an assumption here--but four per cent is close to the level of inflation, and while it may be a high increase for some work places, it will probably be reflective of general wage patterns that we can look to in the next few years.

While we move forward without a lump sum reckoning in a one per cent system, we can see that the wage gap is one in which it is very difficult for a catch-up to occur because of the increase at four per cent that goes along with each of these wage levels, starting from 1986. We can go through 1987, 1988, 1989, 1990 and 1991, and a wage gap that had been \$3,000 is--

Mr. Chairman: Can you stop for a moment? There is a question with respect to your presentation.

Mr. Polsinelli: Ms. Gigantes, can you explain those figures? Under what you have for 1986, I assume the average wage of the 15 women would be \$14,000 and the average wage of the 10 men would be \$17,000. When we go to year one, 1987, let us go to the top figure, where you are showing it at three per cent. What does that average wage of \$15,350 represent?

Ms. Gigantes: That represents a one-year increase of general wages of four per cent plus a three per cent payroll dedication. I have done a comparison on the amount of payroll dedication.

Mr. Polsinelli: I am trying to understand the figures. That \$15,350 represents a four per cent cost-of-living increase plus an additional three per cent?

Ms. Gigantes: That is correct, but I am looking right now at this line.

Mr. Polsinelli: I am just trying to understand what those figures are.

Ms. Gigantes: That is what they are.

Mr. Polsinelli: Okay, but that does not reflect what would happen under Bill 105. Can you appreciate that?

Ms. Gigantes: No, but we are discussing the amendment and the subamendment.

Mr. Polsinelli: Now that I understand those figures, perhaps you can continue.

Ms. Gigantes: You will see that if, as contemplated under Bill 105, we were looking only to a one per cent payroll dedication on an annual basis, by 1991 we would have reduced the wage gap by only one third. That is what happens because of the increasing wage gap tendency that is created by an annual increase that is so low.

Mr. Chairman: You have compounded a number by four per cent annually.

Ms. Gigantes: That is right. We have compounded the numbers by four per cent annually. We are assuming the 15 women and the 10 men receive wage increases of four per cent on an annual basis, and in this line across to 1991, we have assumed that, in addition, the women receive a one per cent special payroll dedication intended to bring up their wages.

Mr. Polsinelli: You do not understand the pay mechanism in the bill if you are making those assumptions.

Mr. Chairman: You are saying the figures are inaccurate.

Mr. Polsinelli: No. I am saying her assumptions are wrong and they are not reflected under Bill 105.

Mr. Chairman: Can you explain what happens under Bill 105 to this the second line?

Mr. Polsinelli: Unless I misunderstand this, what you are doing is raising the women's wages. You are assuming there is a \$3,000-wage gap.

Ms. Gigantes: Right.

Mr. Polsinelli: Therefore, what you are doing is raising the women's wages by four per cent, which is the cost-of-living increase, and then you are raising them by one per cent, which is the annual catch-up.

Ms. Gigantes: That is right.

Mr. Polsinelli: That is wrong, because that one per cent represents one per cent of total payroll.

Ms. Gigantes: Yes. That is the basis on which we did it.

Mr. Polsinelli: You then distribute that one per cent among the women who have to catch up. That one per cent of total payroll may represent more than a one per cent increase in the women's wages. It may represent three per cent or four per cent.

Ms. Gigantes: That is what we have judged. We have actually taken the total payroll represented by the two groups, the men and the women, and distributed that at a one per cent basis each.



Mr. Polsinelli: That is not what the bill says. It says you take one per cent of the total payroll. You then look to the group that has to catch up and distribute that.

Ms. Gigantes: We did. I have detailed figures for the second--

Mr. Polsinelli: I would like to see that.

Hon. Mr. Wrye: You assume a couple of very interesting things. You assume, first, that everybody is going to get four per cent. I think the honourable member would want to note that in most cases, and indeed here within the Ontario civil service as we have moved to the female-dominated groups, the fact of the matter is they have been receiving increases higher than male-dominated groups without pay equity or equal pay for work of equal value. That would probably continue.

The second fact is that you have chosen a very interesting plant, where you conveniently have more women than men and absolutely everyone needs pay equity. You have only two jobs, and they all need pay equity. The figures have been stacked so it will never happen. I think the member will agree with me that you could as easily have a plant with 25 members, 15 women and 10 men, in which there would be only two women who would require a pay equity adjustment or, even under your scheme, an equal pay for work of equal value adjustment. One could have that.

15:50

Ms. Gigantes: Yes, of course.

Hon. Mr. Wrye: You have taken an absolutely worst-case scenario.

Ms. Gigantes: No, it could be much worse. It could be 25 women and 10 men.

Mr. Polsinelli: Let us see the figures.

Ms. Gigantes: In many of the work places described to us by people who made presentations to us, it would be more likely to have 25 women and 10 men because men form the upper echelons and do so-called men's work and the women form the lower echelons and do so-called women's work.

Hon. Mr. Wrye: Ms. Gigantes thinks in that case employers are going to continue to pay a huge increase or even an increase equal to men. It does not make sense. It does not make any sense at all because the gap then never narrows. Indeed, employers would not pay, as this bill contemplates, more than one per cent in the first couple of years.

Ms. Gigantes: I am very interested in having this kind of discussion. If I could, I would very much like to lay out a few more assumptions, since those assumptions have been questioned.

Doing our math on the basis of this example, we have assumed that the total payroll in 1986 is \$380,000 and that if you take one per cent of it and have it available for distribution, the figures are as we see them before us.

On the other hand, if there is the three per cent without any lump sum reckoning, which is our term for the upfront payment in the amendment before us, one can see we would be eliminating the wage gap by the fourth year, 1990.

On the other hand, if we moved to what the amended bill would contemplate, we would be dealing with an upfront payment that would be happening a year earlier.

It can be done in one of two ways. One is to have a one per cent lump sum reckoning built in with the one per cent plan. As one can see, that does not eliminate the wage gap at the year 1991, and the charts we have provided show that it takes a good deal longer than 1991. We would be dealing with 1997 without a lump sum reckoning on a one per cent basis, and 1996, or year 10 of the plan, with a lump sum reckoning upfront.

The point I was trying to make in the discussion of Mr. Gillies's amendments is that if we move to a lump sum reckoning or an upfront payment of three per cent, we can get the job done in a reasonable time frame.

The minister describes this as the worst-case example. I do not believe that. The minister has to recognize that the bill we are going to be dealing with when we come out of committee, at least as far as the House is concerned, is a bill that provides protection not just for the public service but also for the public sector in Ontario. When he looks at a case, he has to remember that.

Hon. Mr. Wrye: I understand that for the last few days this committee has run roughshod over the rules of parliament, but I want to remind Ms. Gigantes that she has now proposed a world--

Ms. Gigantes: Mr. Chairman, I wonder whether I could finish--

Hon. Mr. Wrye: Just a second. She has proposed a world in which we have seven per cent--

Ms. Gigantes: Mr. Chairman, do I have the floor? I will not be much longer.

Mr. Chairman: Are you saying this by way of a question, Minister?

Hon. Mr. Wrye: Yes.

Mr. Chairman: The minister has a question.

Hon. Mr. Wrye: Is she proposing a world--

Ms. Gigantes: Mr. Chairman, do you think it would be reasonable for me to at least finish the presentation? I do not think it will take longer than two minutes, if I could, Minister; then I would be glad to have a discussion on it. I am looking forward to it.

Mr. Chairman: The minister may wish to hold his question.

Hon. Mr. Wrye: I shall.

Mr. Chairman: The minister has given the floor back to Ms. Gigantes so that she can finish her two-minute presentation.

Ms. Gigantes: These figures show us that it is very important to have a lump sum payment because it gives us a head start on the job we are undertaking here, which is to get rid of a wage gap attributable to unequal



pay for work of equal value. If we want to do it in a good time frame, we will do it with a three per cent lump sum reckoning up front and we will finish the job by 1989, presuming we get under way very shortly. If we want to do it less quickly, although still probably a good deal faster, but on the one per cent basis which is the subject of the amendment, we might look at a combination of a three per cent lump sum reckoning and a one per cent annual dedication of payroll.

Alternatively, if members of the Conservative Party--because of the retroactivity which we are suggesting should be incorporated in the bill by the insertion of the notion of an upfront payment based on payroll calculated as of February 11, 1986--feel a reluctance to make the three per cent amount and if we are going to move to one per cent for a lump sum reckoning, a very strong argument can be made that we should have a three per cent annual dedication of payroll.

Otherwise, as we can see when we look at the one per cent calculation--and this includes the lump sum reckoning of one per cent--the job strings itself out for a long period of time. Unless we can get the job done in a certain period of time, we should be looking at defining a time limit for getting it done. That would require an additional motion.

I am more than happy to answer whatever questions I can.

Hon. Mr. Wrye: Let us try to translate what has been done in this example for the real world. I was not here for a lot of public testimony, but I read it. I must say Ms. Gigantes has dreamed up about the worst example I can possibly think of. I am sorry to say she has skewed virtually all the numbers she could.

Ms. Gigantes: Aside from imputing motives--

Hon. Mr. Wrye: The numbers are skewed in the worst way possible.

Ms. Gigantes: They could be much worse and the minister knows that.

Hon. Mr. Wrye: They could be but they are very unlikely to be. Having done that, she has then proposed--correct me if I am wrong--and I presume this is for a very small municipality--a three per cent lump sum payment, presumably to be paid this year. Is that correct?

Ms. Gigantes: That is correct, based on a calculation of total payroll for the employer, calculated as of February 11, 1986.

Hon. Mr. Wrye: It is three per cent for a month and a half. Is it three per cent to January 1, 1987, or to March 31, 1987?

Ms. Gigantes: If the minister has read our amendments--

Hon. Mr. Wrye: I have read them.

Ms. Gigantes: His question does not indicate he has. Our amendments say there would be an upfront payment calculated on annual payroll based on the number of months between whenever we proclaim this bill and February 11, 1986, and that the next payment, in year two, would fall 365 days later. Our amendments say that very clearly.

Hon. Mr. Wrye: Then you propose a three per cent adjustment on top

of a four per cent increase, making the assumption that a four per cent across-the-board increase will happen in the real world of wage negotiations.

Ms. Gigantes: It often does.

Hon. Mr. Wrye: That is seven per cent in year one in a world of four per cent inflation for this municipality.

Ms. Gigantes: No, that is the wrong assumption. Whatever the annual wage increase has been for 1986-87 is presumably under way in employer payouts now, except for contracts that have fallen behind somehow. We are talking about whatever is currently in the mill, plus three per cent dated back on payroll calculation to February 11, 1986. There would not be another payout for 365 days after that lump sum reckoning. In other words, we are assuming that women ought to start receiving some of the benefits of what our equal pay plans will produce as soon as the bill is proclaimed.

16:00

Hon. Mr. Wrye: It says "filed," not "proclaimed." "On the day it is filed," not "proclaimed." Is that not what the amendment says?

Ms. Gigantes: No, it is the equal pay plan that is filed.

Hon. Mr. Wrye: This is the lump sum.

Ms. Gigantes: That is right. The lump sum comes as soon as the equal pay plan is filed, so there are three months in which to establish the equal pay plan. It is filed with the commission and a lump sum payment is paid. Then the next payment occurs 365 days later.

Hon. Mr. Wrye: After the filing?

Ms. Gigantes: After the lump sum payment.

Hon. Mr. Wrye: So presuming there would be 120 days, presuming this bill passed--let us make it easy--on November 30. Thus it neatly works out to March 31, 1987. The three per cent would be for about 13 1/2 months?

Ms. Gigantes: It would be early March.

Hon. Mr. Wrye: I am sorry. It would be for about 17 1/2 months.

Ms. Gigantes: That is right.

Hon. Mr. Wrye: Then 12 months after that, there would be an additional three per cent?

Ms. Gigantes: That is correct.

Hon. Mr. Wrye: Then three per cent after that and three per cent after that and three per cent after that, all the while compounding upon a pay increase of, you are assuming, four per cent in this honest-to-goodness example which is going to occur all over Ontario.

Ms. Gigantes: Are women going to get wage increases apart from equal pay?



Hon. Mr. Wrye: I assume they are but I am trying to draw an analogy. We will get to some of the others. I think it is time people understood just what is reasonable and what is not reasonable in terms of pay equity.

Mr. Charlton: Shall we recalculate this at an annual of two per cent and see how well we do?

Hon. Mr. Wrye: The fact of the matter is that you are proposing a world which is almost Alice in Wonderland. It is a world that is not being proposed by any jurisdiction in North America, and I think we all know it. The time has come for it to be said publicly.

Ms. Gigantes: Minister, could you give us an idea of what public sector wage increases have been in the past year? Would they have been close to four per cent? I mean real public sector; I do not mean just public service.

Hon. Mr. Wrye: You are talking about the wider public sector, the full public sector. I think the figures are probably running 4.3 or 4.4 per cent, some very slight touch over four per cent.

Ms. Gigantes: That is right. So at four per cent for each increase--

Hon. Mr. Wrye: Not all across the board, I remind you.

Ms. Gigantes: --that is not Alice in Wonderland at all.

Hon. Mr. Wrye: But not all across the board. You are not proposing four per cent and you should admit it. You are proposing that the employer in this mythical state has to come up with seven per cent in year one, seven per cent in year two, seven per cent in year three and so on. I just want to submit to you that is not fiscally responsible.

Ms. Gigantes: It depends on what the job is that you want to do and how long you want to take to do the job.

Mr. Gillies, I am glad to see you are here. I have been laying out to the committee the alternatives that can be looked at in a situation where there are 15 women and 10 men in a work place who have been judged, through comparisons of jobs, to be doing work of equal value. We have taken a look, in a world where the annual wage increase is running at about four per cent, at how long it will take under the various schemes possible coming out of our two amendments to get the job done.

When I say "get the job done," I mean eliminate the wage gap. I thought that was the purpose of our efforts here. The minister seems to consider it utterly irresponsible to think of it in those terms. We are looking at three per cent, as proposed in our amendment, a three per cent upfront or lump sum reckoning that would be paid out some time in the next three to six months, depending on passage of this bill, and we are looking further at a three per cent annual payroll dedication after that.

In this situation which the minister considers the worst possible, conceivable, imaginable situation--I pointed out to him that one might have a comparison where there are 25 women and 10 men and that would be "no worse" in his terms--under the proposal embodied in our amendment, we could accomplish the job of eliminating the wage gap by 1989. On the other hand, if we moved to a one per cent lump sum reckoning and one per cent of total payroll annual contribution by the employer, we would not eliminate the wage gap until the year 1996, so we would take a good, long time.

I suggested at the last committee meeting that, if members feel concerned about going to a straight three per cent and three per cent, we should look at some combination of one per cent and three per cent that would achieve our purpose in what one might consider, in politics, to be the foreseeable future.

Mr. Gillies: I apologize for being late. I was representing our caucus at Mr. Connell's funeral.

I wish I had heard the full explanation of your chart but I think I understand what you are saying. Our party would be willing to hear any suggested compromise. Ms. Gigantes, but I have to restate our concern that I expressed at the last meeting about the effect on the province's books of front-end loading too much. There is a question of fiscal responsibility that we are concerned about. It is one of the few things the minister and I have agreed on in recent days.

Mr. Charlton: They are things the minister would not have talked about two years ago.

Mr. Chairman: That is the conversation I have just had with the minister too.

Hon. Mr. Wrye: I disagreed with him as well.

Mr. Gillies: There is an old saying about time or tide but I will not--

Ms. Gigantes: Mr. Gillies, if we look at the two scenarios, obviously this example is not going to be the way it works in every work place. I do not think it outrageous, as the minister suggests, to have a situation such as this one where we are comparing 15 women and 10 men and we have a wage gap of \$3,000 to make up. All we are talking about is \$3,000. It is what happens in a scenario of increased general wages, which the minister's bill and our amendments and your amendments assume will go on. We are not expecting women's wages in terms of annual wages to stay still while they get pay equity, because then they will never catch up.

Mr. Gillies: In terms of the goal, there is absolutely no disagreement. The only question in our mind is that of the phasing. It is the question of the spreading, if you will, of the added expense--

Ms. Gigantes: Let us talk about time then. I think the greatest effect of using a combination of three per cent and one per cent is to do it fastest. In other words, if you make your lump sum payment high, then you have less, on a compounded annual wage gap, to make up as time rolls on. If the three per cent up front plus one per cent per year looks more fiscally responsible to you, that would be one way to do it.

On the other hand, if you are concerned about the question of taking the lump sum payment back to February 11, 1986--and we are agreed that needs to happen; there needs to be a upfront payment--I suggest that if we leave our formula at one per cent lump sum and one per cent annual contribution, we are going to be looking at something like 12 years before we get rid of the wage gap. That seems an extraordinarily long time to contemplate.

The other alternative is for us to put in a time limit and say this job has to be done in five years. Within five years, the \$3,000 gap or whatever it is, equal pay for work of equal value, has to be achieved.



Mr. Gillies: Without having looked at the particulars, I am intrigued by that suggestion because it leaves the flexibility with the government as to how and when during that time frame the increases are phased in. Has the ministry or have you, Ms. Gigantes, done any estimates on the effect on the province's spending of the kind of lump sum payment in year one that you are proposing?

16:10

Hon. Mr. Wrye: You moved the amendment; surely you have a figure in mind. You are the one who moved to expand this bill out of all proportion. I do not think you should try to offload the problems on Ms. Gigantes. Your party and the New Democratic Party ought to be prepared right now to give us an estimate of what that will cost. Presumably--I am anticipating an amendment, though I should not--you want this money out of the consolidated revenue fund.

Ms. Gigantes: No, you are not anticipating an amendment.

Hon. Mr. Wrye: You should be suggesting to us how much this will cost the consolidated revenue fund in this fiscal year.

Ms. Gigantes: You are under a misapprehension in that anticipation.

Mr. Gillies: With respect, I have not moved any amendment about moving from one per cent to a three per cent lump sum.

Hon. Mr. Wrye: You have gone the other way. What does that cost?

Mr. Gillies: That has all been discussed. Your own staff prepared figures for us. Have you not seen them?

Hon. Mr. Wrye: What does that cost?

Mr. Gillies: Where have you been in the past couple of weeks?

Ms. Hart: With respect, that was a ball-park figure and it came with a question mark attached. What are your figures?

Mr. Gillies: It appears the minister does not have faith in the figures prepared by his own staff. We were quite satisfied to accept them.

Mr. Polsinelli: You moved the amendment without any figures then? Is that what you are suggesting? You went into it holus-bolus without knowing what the effect would be?

Mr. Gillies: We had ball parks in mind, which apparently is what you had in mind too.

Mr. Polsinelli: You never released those to us.

Mr. Chairman: Mr. Polsinelli, do you wish to ask some questions?

Mr. Polsinelli: Yes, I do, Mr. Chairman.

Mr. Chairman: You have the floor now.

Mr. Polsinelli: Dealing again with Ms. Gigantes's teaching

abilities, I must apologize initially. I accept that you used the right assumptions. I do not know whether your figures are correct. I would like to ask whether you concur that this situation is not your ordinary situation. Perhaps this situation could be described as a one-in-a-thousand situation.

Ms. Gigantes: No, I do not think that is the case at all.

Mr. Charlton: When was the last time you were in a nursing home?

Ms. Gigantes: As I said earlier in response to comments by the minister, many of the people who came before us and made submissions described situations in which, if job comparability is made the question, we will have a fairly substantial group of women who have been doing work that has been undervalued and called women's work. We will have a smaller group of men who are doing these more executive-named positions.

Mr. Polsinelli: You are suggesting this is the normal situation you would face?

Ms. Gigantes: I do not know how normal it is and do not think one can tell. I do not think you could tell me how normal it is. I am just saying that in a situation such as this, we have to face the fact that to get rid of the pay gap, even when it is a pay gap of \$3,000, it will take too long at one and one.

Mr. Polsinelli: I accept that in this type of situation it may take 10 years to close the wage gap. I would like to determine from you whether in your opinion and based on any evidence you have this is a common situation or whether this is the anomaly.

Ms. Gigantes: We are being told the government will produce equal pay legislation covering the full public sector, the part that is not addressed by Bill 105, plus the private sector. What documentation does the government have about the situations we will find in the work places of Ontario?

Hon. Mr. Wrye: We have done a number of studies. That is the short answer. There may be individual work places--

Mr. Polsinelli: I have not received my answer.

Mr. Charlton: There were dozens of presentations made to this committee where the wage gap stretched to \$10,000 and \$12,000, not \$3,000.

Ms. Gigantes: We looked at Minnesota and have seen catch-ups--

Mr. Charlton: There were wage gaps in the Yukon of \$17,000. There were several cases in Manitoba of \$10,000 and \$11,000 wage gaps.

Ms. Gigantes: In Minnesota, the catch-ups were into the 20 per cent range.

Mr. Charlton: That is not an unusual situation.

Mr. Polsinelli: I did think I was asking the question of Ms. Gigantes before other committee members jumped in.

Mr. Chairman: You were.



Mr. Polsinelli: I take it then you do not have the information to determine whether this is common.

Ms. Gigantes: Nobody does. If you cannot produce it, then I do not know who can.

Mr. Polsinelli: From my point of view when approaching this legislation, at least in Bill 105 we approached it as dealing strictly with the narrow public sector. Irrespective of that, we also looked at comparable legislation in Canada, predominantly in Manitoba. Manitoba has basically accepted a situation of one per cent per year to a maximum of four years. They cap it at four years.

It seems to me our legislation is a lot more progressive than that in having an open-ended system. If you find this type of situation where the gap will not be closed in four years, then our legislation is more progressive and allows it eventually to be closed, even if it takes 10 years.

Ms. Gigantes: Your legislation as we are proposing to amend it would, but your legislation as it sits before us in the form of Bill 105 does not allow for someone to file a complaint after the achievement of a so-called pay equity plan and say, "The pay equity plans have worked in my work place, but I still do not have equal pay for work of equal value."

Mr. Polsinelli: But our legislation is open-ended. If it takes five or 10 years to close that gap, it will allow it. Manitoba says that after four years the gap as it has been identified is closed.

Hon. Mr. Wrye: Can I return to Mr. Gillies, who has proposed one per cent? I was wondering if there was a figure I had not seen in my absence. I am not talking about the \$862 million.

I would like to know, and while I am at it, perhaps Ms. Gigantes has a figure on the cost of carrying this amendment, at either one per cent or three per cent, to the consolidated revenue fund on March 31, 1987, or, assuming that it will not be to the consolidated revenue fund, the total gross cost to municipalities, school boards, universities, hospitals, etc. I think it is about time the taxpayers of this province had some knowledge of what you folks are proposing.

Mr. Gillies, you can wrap yourself in the cloak of fiscal responsibility all you want, or attempt to, by going from three per cent to one per cent. I think it is time the taxpayers of this province had some idea what you folks have been doing in this committee and how much it is going to cost.

Mr. Gillies: In response to the minister, we have a government here which has the hypocrisy of introducing legislation for the narrow public service, which is unnecessary, because it could effect the change by regulation.

Hon. Mr. Wrye: If we had done that, you would have complained about that too.

Mr. Gillies: It is promising coverage of the broad public sector and the private sector.

Hon. Mr. Wrye: You would have said we did not let you debate.

Mr. Gillies: If you do not mind, my gosh.

Mr. Chairman: Can we allow Mr. Gillies to finish his statement? Then you will be on, Minister.

Mr. Gillies: It is really exciting. All the weeks the minister did not deign to appear before this committee when this legislation was being discussed, he has bottled it all up inside and now he wants to get it all out, even when other members are trying to speak.

Ms. Hart: That is hardly fair. The minister asked to be here. It was Mr. Gillies, among others, who said we were quite prepared to proceed without him and voted to do such; so he can hardly turn around and blame the minister for not being here.

Mr. Gillies: We have an old tradition around here that when important government legislation is being debated before a committee, the minister appears and adjusts his schedule to do so, but let us not get into all that.

Ms. Hart: We also have another important tradition that when the minister asks you to adjourn--

Mr. Charlton: Now we deal with legislation around the minister's attendance.

Mr. Chairman: Can we have some order?

Mr. Gillies: The minister asked me a question.

Hon. Mr. Wrye: On a point of order.

Mr. Chairman: I will recognize the point of order. Could we all calm down while I am hearing it? I will go to the minister.

Hon. Mr. Wrye: I made it clear early on, out of courtesy to the committee, that I had a very difficult problem in terms of having to be in Sault Ste. Marie for an important conference. It was important enough that the leader of the third party and six or seven members of his caucus were there; a number of members of the Conservative party were there. I would think you, as the Labour critic for your party, would understand why the minister of Labour, along with the other senior economic ministers, ought to be at that kind of conference.

Mr. Charlton: Where was the conference in August, when more of us who would have liked to be there could have been there?

Mr. Gillies: The minister will know that I have said publicly and in this committee I felt that was the appropriate place for the minister to be. Now if he would stop being a bit of a donkey today and let us get down to business, these interjections would not be necessary on his part or ours.

16:20

Mr. Polsinelli: Is "donkey" parliamentary?

Mr. Gillies: I do not know. Check it out.



The point is that you have legislation here for the narrow public sector. You and the minister responsible for women's issues (Mr. Scott) have promised broad public sector legislation this session.

Hon. Mr. Wrye: You are going to get it.

Mr. Gillies: Let us not assume that any hospital or any other agency in the broad public sector should for a minute think we in the opposition are proposing expensive measures which they will not have accrue to them one or another anyway. Let us put that red herring aside. The questions are, how do you do it and when do you do it? We in the two opposition parties feel the appropriate mechanism for doing it is broadening this legislation.

Hon. Mr. Wrye: Right. I am simply asking you what it would cost the consolidated revenue fund to do it? It is not a tough question. You are the ones who want to do it back to the date of the introduction of the bill. If my friend the member for Brantford wants to stand up and wrap himself in the cloak of fiscal responsibility, he should tell us how much it is going to cost in a fiscally responsible way.

Mr. Gillies: It has been much discussed in this committee.

Hon. Mr. Wrye: No, it has not.

Mr. Gillies: It has been much discussed. I assume you have a figure in mind for bringing in legislation for the narrow public sector. It would be irresponsible for the minister to introduce legislation of this kind without a figure in mind. We indicated that we would be broadening this legislation to cover something of the order of nine times the women covered in your wholly inadequate bill. Therefore, it is not be illogical to assume that the cost will expand ninefold for the interim period, until you get off your rear end and bring in the other bill, when the costs will accrue anyway. What is all this nonsense?

Hon. Mr. Wrye: I understand. I am not complaining to my friend that the costs will not eventually accrue. You are the latter-day converts to pay equity. I do not think this party needs any lectures from a party that was so far behind.

Mr. Gillies: You are a bit defensive, are you not?

Hon. Mr. Wrye: Is it \$20 million? Is it \$200 million? What are we talking about? What is the cost of your proposal to the consolidated revenue fund? It is a very simple question.

Ms. Gigantes: I think the minister is being too clever.

Mr. Chairman: Can I go to Ms. Gigantes and then back to Mr. Gillies? Ms. Gigantes has been patiently waiting to get the floor.

Ms. Gigantes: The minister is being too clever. The minister knows what the payroll is for the public sector in Ontario. He knows what one per cent of that is and he knows what three per cent of that is. Right? Do you not?

Hon. Mr. Wrye: I have some idea. Put it on the record.

Ms. Gigantes: You put it on the record.

Hon. Mr. Wrye: I think the figure would probably be more than \$200 million, at one per cent.

Ms. Gigantes: You are talking about a one per cent lump sum payment dated back to April 11, 1986?

Hon. Mr. Wrye: Back to March 11, 1986. That is out of the consolidated revenue fund. You are talking about a substantial increase to municipalities. You are talking about a sudden increase. We will get to that; it is the second question.

Ms. Gigantes: I do not know what you are talking about here. What is your \$200 million? Tell us.

Hon. Mr. Wrye: That is going to be cost of Mr. Gillies's one per cent.

Ms. Gigantes: That is one per cent of what? For doing what?

Hon. Mr. Wrye: That is the cost of Mr. Gillies's one per cent amendment. That is his lump sum.

Ms. Gigantes: That is the amount of money women would have got if the bill had been passed on February 11, 1986.

Hon. Mr. Wrye: I understand that. Perhaps in a minute either you or I can describe how the payouts and implementation are going in Manitoba, where your friend Howard Pawley is Premier. There are limits to just how generous one can be. I would like to go back to 1983, if I could. We can go back to 1982, but there are limits. Your party, as well as ours, indicated in the accord that we would do this in a fiscally responsible manner. I am suggesting that neither opposition party is doing it in a very fiscally responsible way.

Ms. Gigantes: That is your opinion.

Mr. Charlton: You did not live up to the promise of the accord, friend. Both these bills were supposed to be on the table in the House in the fall of 1985.

Ms. Gigantes: In the first session.

Mr. Charlton: You cannot live up to your word.

Mr. Chairman: Can we perhaps not get into the nuances of the accord? That is a subject for another day. I will go to Mr. McLean, who wants to raise a point of order.

Mr. McLean: On a point of order, Mr. Chairman: I have never seen anything like this in a committee for a long time. I am wondering whether--

Mr. Polsinelli: You were not here two weeks ago.

Mr. McLean: I should drop around more often, I suppose.

I have never observed ministry staff in a committee who, when we were asking for information, were unable to provide the committee with sector numbers, if there were any. They should have everything at their fingertips. Whether there are 100,000, 200,000 or 300,000 people, they should be able to



tell committee members exactly what the cost would be. I see the minister questioning the members on what they think the cost is going to be, which is totally--

Mr. Polsinelli: That is because you broke the amendments.

Mr. Chairman: Can Mr. Polsinelli restrain himself while I am trying to maintain order?

Mr. Polsinelli: It is very difficult to restrain myself. That deserves a response.

Ms. Gigantes: I would like to make a point in response to what the minister has just told us in his solemn, ear-wagging, eye-rolling fashion about fiscal responsibility.

Since the minister and his government pledged themselves in May 1985 to table legislation providing for equal pay for work of equal value in both the private and public sectors in Ontario and to table that legislation within the first session of the new parliament, the Treasurer (Mr. Nixon) has had two nice little bonuses of unexpected increases in revenue. Still, almost 16 months after that commitment was made to women in Ontario, the minister is sitting here wagging his ears at us and telling us we have to go slow on equal pay for work of equal value.

Are we here to get equal pay for work of equal value? Are we here to deliver it to women? Are we here to deliver it within some kind of time frame that makes sense of a commitment? Are we here to deliver it in 1986 when the promise was made in the fifth month of 1985? Are we here to consider that though this bill was late, it was tabled, and though it is a bad bill, it can be amended?

We can amend it to say that since it was tabled the government shall undertake to give the women of Ontario at least a portion of the commitment of 1985 in real fiscal terms. Is that what we are here to do? That is what I hope we are here to do.

Hon. Mr. Wrye: It seems to me we are here to take the first of a number of steps to end the kind of gender-based, economic discrimination women have faced for too long. I have no difficulty agreeing with Ms. Gigantes's point of view on that. We are here to do that but we are here also as part of a real world--

Ms. Gigantes: Has the Treasurer had two bonuses?

Hon. Mr. Wrye: The Treasurer has passed along a lot of those bonuses. Maybe Ms. Gigantes missed his announcement of all the money flowing to a number of public sector agencies, which will allow them to give very substantial increases.

Many of them are giving increases that begin in a kind of lump sum way to recognize, because of the differential nature of those entries, the fact that we are moving to pay equity.

I want to remind Ms. Gigantes and put it on the record that in NDP Manitoba the narrow public sector and the broader public sector--broader except for municipalities and school boards; they were a couple of the significant groups that were not included--are treated in one bill, but they

are treated with different timing. She would want to acknowledge that. She would want to acknowledge that those adjustments she wants to begin to pay to the broader public sector in Manitoba as of February 11, 1986, will begin in September, 1988.

Ms. Gigantes: That is correct.

Hon. Mr. Wrye: She would want to acknowledge that there is a four per cent cap in Manitoba. There is no cap in Ontario. She would want to acknowledge that the payout is one per cent--no more than that--per year.

Ms. Gigantes: Correct.

Hon. Mr. Wrye: She would want to acknowledge that in Bill 105 the payout is at least one per cent per year. It is not a maximum of one per cent; it is at least one per cent. She would want to acknowledge that Manitoba's pay equity program is 70 per cent for women and Ontario's pay equity program is 60 per cent for women.

She should acknowledge there is a myriad of differences, all of which are to the benefit of the women of Ontario over the women of Manitoba. I will admit that Manitoba, as soon as the Attorney General's bill is in, will rank as perhaps the second-best jurisdiction in North America in the achievement of pay equity. It ought to be put on the record that Ontario is going to be a North American and perhaps a world leader in moving to pay equity.

16:30

The people of Ontario expect us to move in a reasonable and responsible manner so that we do not drive business away. I know that is a horrible thing to say to your party and perhaps to the Tories these days. We would like to keep jobs in this province and continue to expand the way we have been for the past 17 months under the Peterson government. We would like to create 120,000 new jobs next year. We must be responsible about it, while at the same time moving as quickly as we can towards reducing the wage gap.

Ms. Gigantes: The minister has made a number of pertinent and impertinent suggestions. He is quite correct in part of his description of the Manitoba bill. It is not entirely relevant to our discussion here and now of what is happening in Ontario.

Hon. Mr. Wrye: Why not?

Ms. Gigantes: In Manitoba, when a public service and a public sector bill is brought in, it affects the work life and the pay of many more women as a percentage in the economy than when a public service or a public sector bill is brought in in Ontario because the public service and the public sector make up a much larger part of the Manitoba economy.

Second, Manitoba is now moving to create equal pay in the private sector in that province. We have yet to see a bill tabled in Ontario in spite of the commitment. No matter what everyone may think of their legislation, the Manitoba government never promised anybody it would bring in the whole thing in 1985. Your government did. Further, since the promise was made, the Treasurer has much more money in his pocket than he thought he was going to have. Surely the government worked out whether it was going to be fiscally responsible to provide equal pay for work of equal value for women in Ontario before it signed the accord with my party, in which the government said it would table the legislation.



The whole question of women receiving extra little bonuses in their pay packages apart from equal pay is the reverse of what is happening, and the minister knows it. Adjustments that might have been made by employers in recognition of equal pay are now being refused. Employers are saying, "We must wait and see what is going to be in the legislation." That ranges from the Canadian Union of Public Employees hospital workers, who have gone to arbitration on this very point, to school boards and universities, which are saying: "No, we are not going to touch the equal pay question. We are not going to try to make any negotiated improvements in the wage gap. We are not going to move at all until we see what the legislation requires of us."

The minister knows that is happening. He knows it can be and has been documented. Do not tell us that employers are already giving five per cent to women and 3.5 per cent to men. That would be against the principle of the legislation we are striving for. One of the principles that is understood and has to be accepted all around is that men's wages must not be held back to provide a lessening wage gap between men and women.

I have attempted to provide the committee today with a set of alternatives and some practical examples of the implications of those alternatives. The minister can quarrel with the exact nature of the example. He may think four per cent per year for everybody is outrageous in the public sector. I do not think it is. Most people would feel it is a pretty good guess at what we may be looking at in general wage increases. We know the inflation rate is more than four per cent. We know wage settlements have tended to be below the inflation rate for several years. If we look at four per cent, we may be off by a point or two, but it is not unreasonable.

The minister may be right that in many work places the catch-up gap of \$3,000 on a \$14,000 salary is high. He may be right that in many places, three women will need their wages attended to, in evaluating job comparability, instead of 15. Given all that, we have to look seriously at the two tendencies I talked about. We are agreed in the opposition that there shall be a lump sum reckoning and that it shall be backdated to February 11, 1986.

We have to ask ourselves whether we want to put a large measure up front to increase the speed with which we can eliminate the wage gap in the work places in Ontario on a one per cent per year contribution of annual payroll, or whether we should say, "Because we are backdating it, we should make a one per cent backdate and then look at a three per cent contribution of annual payroll." Do we find that a more acceptable combination? We are going to have to look at one of those or a time limit.

We have already passed the amendment which says that the objective of this legislation shall be, not to provide pay equity plans, but to provide equal pay for work of equal value. There have been amendments which would open the possibility for women and men in undervalued job groups to lodge complaints after the achievement or the working through of a plan. They could say, "We have not got equal pay for work of equal value."

Unless we set some kind of mechanism to provide equal pay--the upfront money plus an annual dedication--or a time limit, we are going to have trouble with the number of complaints. Further, if we set a time limit, we have to make sure the mechanism we are providing is good enough so that once the time limit is past, we will not be swamped with complaints. These things need to be looked at.

I prefer to do it with three per cent and three per cent. I have some

sympathy with asking the Treasurer (Mr. Nixon)--which this bill does; we are not amending that at all, Minister; section 29 remains--and the Treasury of Ontario to come up with three per cent backdated to February 11, 1986. That may be a large chunk up front, but if that is true, then we have to look at a three per cent contribution after that or a time limit. Otherwise, there will be too many cases generating too many complaints, and that will not do the job we are here to do.

Hon. Mr. Wrye: What examples do you have of that? Given that Minnesota turned out to have a gap of 3.7 per cent and given that Manitoba thinks four per cent will close the gap, could you share with the committee the examples that explain why you want to move to three per cent?

I remind you that closing that is going to cause some very real financial problems. The consolidated revenue fund can ultimately handle an amount if it absolutely has to. After the consolidated revenue fund has put some money up front, then you are asking municipalities, school boards, hospitals, universities and all that group to put the money up front next year.

Ms. Gigantes: Look at section 29. We are not touching section 29 in Bill 105--your bill. Do you know what section 29 says?

Hon. Mr. Wrye: Yes.

Ms. Gigantes: It says that before March 31, 1987, we will have payment from the consolidated revenue fund and, thereafter, the money shall be paid out of moneys appropriated therefor by the Legislature. In other words, you would have to budget for it.

Hon. Mr. Wrye: So do municipalities. They pay some of the costs of their--

Mr. Charlton: Ms. Gigantes is pointing out that section says it then becomes a part of your annual transfer to the municipalities. If that is what the section says, that is what you will have to do.

Hon. Mr. Wrye: Are we going to have to pay all of it? I do not know how that works.

16:40

Ms. Gigantes: The minister is raising a very interesting question. Is he suggesting that the property taxpayers of this province be called upon to make up the undervaluing of women's work in Ontario?

Hon. Mr. Wrye: You clearly want the taxpayers to pay it. Is this a pay equity, an equal pay exercise, or is this turning into a great debate about whether the property tax base is too wide, too narrow or whatever? That is the problem you have. You have so skewed the principle of this bill that you are now trying to work out how you can create a new principle--

Ms. Gigantes: It is right there in your bill. We are accepting the proposal you made for the payment of the public service and we are saying we will extend it to the public sector.

Mr. Charlton: You are the one who is scrambling to try to work it out. It is there.



Hon. Mr. Wrye: Only you are not in the public service any more, you are in the broader public sector as well.

Ms. Gigantes: We are in the full public sector of Ontario. That is correct. That is what we mean.

Hon. Mr. Wrye: Section 29 does not apply--

Mr. Charlton: Who pays the staff of nursing homes now? Who is going to pay the staff in nursing homes under your bill?

Ms. Gigantes: Section 29 provides for the payment of the equal pay costs. That is what we intend to keep.

Hon. Mr. Wrye: Right. You have decided to have the transfer-of-cost debate tune in on the municipal tax base. You are going to have it right here in this committee. The principle of this bill, which both opposition parties voted for--the money for the public service and the six other agencies under the Crown Employees Collective Bargaining Act all came out of the Treasury of Ontario. Where does the money to pay municipal salaries come out of?

Ms. Gigantes: It comes from various sources.

Hon. Mr. Wrye: That is right, but you are now going to change those rules unilaterally.

Ms. Gigantes: There is nothing unilateral about it. A combination of groups in this Legislature has decided that your proposal for dealing with public service pay equity payments is what it would like to see for equal pay for work of equal value payments in the full public sector of Ontario. I do not know why you cannot get that notion through your head. That is exactly what we are promoting.

Hon. Mr. Wrye: I do not understand why up until now we have paid salaries to people all the way from the city administrator to the newest beginning clerk out of a pot of money which has come, as you have said yourself, from various sources.

Now, at the very moment when we say we are moving to a different kind of pay scheme, when we are going to have equal pay for work of equal value, pay equity or whatever, we are still going to have a pay packet total for men and women but municipalities need not worry because along come their friends in the New Democratic Party, who say it will not cost the municipalities another dime. Talk about trying to get off the hook. That is what it is.

Ms. Gigantes: We propose to be the government in this province at some point. We will be very happy to administer equal pay for work of equal value in the public sector of Ontario using precisely the proposals that sit before you.

Hon. Mr. Wrye: If you want to pay 100 per cent of the cost to municipalities, that is fine. Let us have that debate when we have the cost to municipalities. This is the first time in my reckoning--perhaps I am wrong--that your party has ever suggested a new program.

Ms. Gigantes: Come on, you cannot have it both ways.

Mr. Charlton: You are throwing red herrings all over the lawn here.

Ms. Gigantes: He has not read our amendments.

Mr. Charlton: Take the proposal that the Treasurer made to return municipal payments by the province to the level of 1974. The cost of that one proposal alone is 11 times the cost of what we are talking about here. Keep talking about fiscal responsibility. See how far you can dig yourself in.

Hon. Mr. Wrye: When was the last time we had a proposal that the money for a specific municipal program, something such as this, simply all come out of the consolidated revenue fund?

Mr. Charlton: The ultimate effect of this section in your bill will be that the province's share of municipal costs as a percentage of the total municipal costs will be somewhat higher than it is now. That has been a proposal of your party for a long time anyway. Read the books. Read the statements. Read your policy.

Hon. Mr. Wrye: I understand that. I am not objecting to that; I am simply saying that if you want to have that debate, let us--

Mr. Charlton: We are trying to get you to do what you have been saying for a decade.

Ms. Gigantes: You were the person who raised that in the context of our discussion about how quickly and how effectively an idea--

Mr. Charlton: You can say it only so many times before we believe it.

Mr. Chairman: Mr. Polsinelli has been waiting patiently to get on the floor. Is your comment still relevant, sir, or have you decided to pass?

Mr. Polsinelli: I was going to respond to Mr. McLean's point of order, but at this point it is inappropriate.

Mr. Chairman: All right. Do any other members wish to speak on the amendment before us? Mr. Gillies, this is your original amendment, which was proposed at the meeting almost two weeks ago. Just so that everyone is clear, that is the one that is still on the floor.

Mr. Polsinelli: That is the amendment to the amendment.

Mr. Chairman: Yes.

Mr. Polsinelli: As a question of procedure, when you start taking the votes, will we be voting on the amendment to the amendment and then on the main clause?

Mr. Chairman: That is right. It is in inverse order.

Mr. Polsinelli: Will there be an opportunity to debate after the amendment either carries or is lost?

Mr. Chairman: Yes.

Mr. Wrye: Just on the subamendment; it is not as though you are going to be taking a vote on the other one.

Mr. Polsinelli: If you want to talk time limits--



Mr. Chairman: We can, if there is no debate.

Mr. Polsinelli: No, because I do have some questions with respect to the other sections.

Mr. Chairman: My usual routine is to call for the comment before moving to the second vote, so there will be an opportunity between the two votes. It has been suggested that some members would like to take a break shortly. Do you wish to have the vote on the subamendment now and then take the break?

Mr. Gillies, do you want the floor for a moment?

Mr. Gillies: For a moment, Mr. Chairman. Our party will not accept the three per cent lump payment. However, the proposal or the thought Ms. Gigantes had about a time limit to ensure that adjustments are made within five years or six years, whatever it might be in toto, has some attraction for us, if there is some way of working that out. Perhaps I should offer to stand down the amendment until we at least discuss that.

Hon. Mr. Wrye: Why do we not take a break so we know what is on the table?

Mr. Gillies: Sure, let us take a break.

Ms. Gigantes: Are you part of this deal, Minister? Are you dealing?

Mr. Wrye: No, I am much happier with the way the government has placed this.

Mr. Chairman: Would members of the committee like to take a 10-minute recess?

Ms. Gigantes: I thought you said let us see what is on the table.

The committee recessed at 4:50 p.m.

17:06

Mr. Chairman: There are still some members who have not returned. However, we were in the midst of discussing the subamendment proposed by Mr. Gillies. He had the floor when we broke. The intention at that time was that there would be conversations during the brief recess we had. Perhaps we have come to some form of accommodation. Mr. Gillies may again have the floor.

Mr. Gillies: We would like not to impose the three per cent lump sum but to build in some flexibility, pretty much in line with what Ms. Gigantes suggested earlier. The minister would agree; he talked about flexibility and trying to accommodate as much as possible the various agencies and others who will be under the legislation.

My preference, therefore, is for some sort of time frame or limit for the completion of adjustment but therein allowing for flexibility, case by case, agency by agency. My question to legislative counsel is where the appropriate place would be in here to insert a feature calling for such a limit. Would it be part of this amendment or elsewhere? In other words, it would not say, "three per cent this year, one per cent in subsequent years," but, as this legislation does, "the minimum one per cent but remembering that in, let us say, five years, it has to be done."

Mr. Revell: It is a difficult question to answer on the spot.

Mr. Gillies: I thought it might be. If we, meaning you and I and whoever else is interested, want to explore that and need some time to do so, I am happy to suggest standing that down and moving on to something else.

Mr. Revell: That is the only way to accommodate what has to be done. I assume this would mean striking out the lump sum provision or the one per cent provision and the interrelationship. It has to be stood down for at least 24 hours.

Mr. Chairman: It is a major adjustment to the bill and, if we are going to proceed in a responsible fashion, we should attempt to have it put together in such a way as to satisfy the majority of the committee. Have you now agreed to stand down sections 7 and 8 down? If that is agreeable to the mover of the main motion as well as the mover of the subamendment, sections 7 and 8 will be stood down for 24 hours, if it is the chair's information that we hope to have some answers on it tomorrow.

Ms. Gigantes: That is agreeable.

Mr. Revell: A minimum of 24 hours.

Mr. Polsinelli: You are looking at 22 hours.

Mr. Chairman: I fully appreciate that. I am trying to see if legislative counsel can accommodate us within that limited time frame.

Mr. Revell: As I say, it would be at a minimum, possibly next Monday. If we could have until next Monday, that would be by far the best.

Mr. Chairman: Why do we not try for tomorrow at the meeting? We assume you will proceed in all haste, and if it cannot be done--

Ms. Gigantes: I suspect it is not going to be possible.

Mr. Chairman: Procedurally, so we understand what we are doing, sections 7 and 8 have been stood down. The next amendment is the NDP amendment for sections 9, 10 and 11.

Mr. Polsinelli: Does that mean we do not have a chance to discuss 7 and 8? I have some interesting comments to make.

Mr. Chairman: Can you save them for another day? We have moved on and stood down those sections. I will go to Ms. Gigantes on 9, 10 and 11.

Hon. Mr. Wrye: To be helpful in moving ahead, we have a problem with part of section 7 and its procedural orderliness. Perhaps we might have that discussion now, since the determination of the committee on that does not in any way affect this three per cent, one per cent, five-year cap or whatever it is the committee wishes to do. Why do we not have that discussion?

Ms. Gigantes: Do I assume everybody is satisfied we stood down sections 7 and 8?

Mr. Chairman: Yes. I repeated it, I believe on two occasions.

Ms. Gigantes: If the minister wants to raise a question about the



amendments that have been brought forward, why does he not raise that instead of having a discussion now? We would be aware of the questions he has, so that when we come back we will have given some thought to them.

Hon. Mr. Wrye: I thought we might have that discussion now and make a determination on whether we wanted to proceed. This is all done in an effort to keep the committee moving. Since we are going to have to have this discussion and in all likelihood make a determination in any event, rather than stand down 7 and 8-- I am clearly anticipating something you had not. That is fair. We had not indicated it, but we have problems with a subsection of section 7.

Ms. Gigantes: Which one?

Hon. Mr. Wrye: Subsection 7(2).

Mr. Gillies: In the amendment?

Hon. Mr. Wrye: In the NDP amendment. If you would like to move to that, we can have a discussion and get that cleared away one way or another.

Ms. Gigantes: I am not willing to contemplate amendments to 7 and 8. I am very willing to contemplate the minister raising the concerns the government has about the proposed amendment. Then when we deal with 7 and 8, we will have had some time to reflect on what it is he wants to identify as a problem.

Mr. Charlton: Raise the issue; we will have the discussion.

Mr. Gillies: We have been talking about 7 and 8; it would be logical for the minister to raise his questions about 7 and 8 now.

Ms. Gigantes: Feel free.

Mr. Polsinelli: Our concern deals with the amendment to subsection 7(2). I am not sure whether there is a procedural problem there, but prior to talking about whether or not there is, I would like to ask Ms. Gigantes to explain what type of order the commission would make under subsection 7(2) in the situation where there are no predominantly male jobs with which to compare predominantly female jobs in an establishment. What type of comparisons do you contemplate the commission making?

Ms. Gigantes: I can give an example, but the commission will make those decisions that it feels are reasonable. I cannot figure out what the commissioner will decide, but if I were to forecast what it would mean, perhaps we should look at an example, such as private day care workers. In a private day care, the bulk of funding comes through payments from the Ministry of Community and Social Services, but there may be no male staff with whom to compare the workers.

In a municipal day care setting, the employer will be the municipality, and day care workers can be compared to other municipal employees in terms of the skill, effort, responsibility and working conditions under which they perform their work.

It seems to me that the commission, in determining whether there ought to be an attempt to provide equal pay, or in determining how to provide equal pay for work of equal value in a private day care setting, might well wish to

compare how similar workers employed by a municipality have had their wages adjusted to reflect the real value of the work.

Mr. Polsinelli: I take it, Ms. Gigantes, that you are contemplating the commission would order that private day care workers be compared with municipal day care workers in this type of situation?

Ms. Gigantes: Yes. What the effect of that comparison might be would be within the commission's right to determine. There are many ways the commission could look at it.

The commission might look at the absolute level of wages or the commission might look at the amount of the increase in wages given to the municipal day care worker. For example, if there was an equal pay catch-up payment of, say, \$1,500 or \$3,000 to a municipal day care worker, then the commission might judge that there should be comparability in the equal pay adjustment that is made.

Mr. Polsinelli: Mr. Chairman, that is my concern. While the attempt by Ms. Gigantes in this subsection 2 is admirable, and I understand why she is putting this together, it is just another example of why this legislation is not appropriate for the broader public sector and the private sector.

I raise the concern that was raised by legislative counsel about two weeks ago in trying to keep the bill consistent in the various amendments that would be proposed. I would suggest that, on a point of order, this subsection is out of order. My reasoning for such is that the committee will recall that about two weeks ago we passed section 3. It reads, "No employer shall establish or maintain gender-based differences in compensation between employees in the employer's establishment who are performing work of equivalent value."

As passed, this section refers to differences in compensation between employees within the employer's establishment. This subsection 7(2) states that, in fact, although an employer is required to maintain pay equity only within his own establishment, those pay equity rates will be set by comparisons with other jobs outside of his establishment.

This interpretation has been confirmed by Ms. Gigantes in suggesting that the commission would, or could, order that private day care workers, where there is no predominantly male job to compare them to, could conceivably be compared with municipal day care workers.

This approach is simply inconsistent. On the one hand, the legislation talks about the compensation differences which occur within an establishment. On the other hand, it says that if there is not a comparison available within that establishment, the commission may look anywhere else it pleases to make a comparison. It is suggested that this amendment 7(2) is out of order on that basis and is inconsistent with the already-passed amendment to section 3.

It is a well-know tenet of parliamentary procedure that an amendment which is inconsistent with a previous decision of the committee is out of order. In this regard, I would like to refer you to Beauchesne on pages 233 and 234 and also to Erskine May on pages 521 and 525.

17:20

I say in closing that this is another example of why the parliamentary



rules and procedures exist. Those procedures were breached by this committee a while back, and I do not say that lightly. I recall your ruling on that, Mr. Chairman. This is another example of why it is wrong. These amendments just will not work.

Ms. Gigantes: Mr. Polsinelli has raised a point of order in the discussion of two amendments that we just agreed we were going to stand down. Leave that aside for the moment. I do not think we should get into a discussion of a point of order on an amendment that we all agreed we were going to stand down. I would suggest he made that decision.

Mr. Polsinelli: You are interested in delaying this legislation. I think you are just stalling.

Ms. Gigantes: May I point out to Mr. Polsinelli, in preparation for the real discussion on this subsection 7(2), that while the points he makes are valid points at one level, at another level, which is the real level we are looking at, given section 29 of the bill, which we do not change, all such employees, who would be covered by the amended Bill 105, would be employees for whom the provincial government is ultimately responsible in terms of the allocations they had made for wages. The minister is going to roll his eyes and wag his ears again, but he does not see it the way I see it. I am sure I can persuade Mr. Polsinelli to see it the way I see it.

The way I see it, the wages that go to private day care workers come very much out of the same pocket, the provincial budget, as do the wages of a municipal day care worker. The fact is that a municipal day care worker gets more money across Ontario. Usually, the sum is several thousand dollars more. They tend more to be unionized, which is why I would consider that a commission might wish to judge that the amount of make-up pay which is determined to be adequate to provide equal pay for work of equal value in the municipal day care system, rather than the absolute pay provided in the municipal day care system, would be something the commission would like to consider as a relevant consideration.

However, I do have some faith. I do not know about Mr. Polsinelli, but it is possible to set up an equal pay commission which has some sensitivity to the facts of life in this province and to look upon cases in a reasoned manner. We are giving the equal pay commission a fair amount of power under anybody's bill and I think it reasonable to expect that we are going to have reasonable judgements from the equal pay commission.

Further, I do not understand how Mr. Polsinelli can suggest that we are going to have equal pay for work of equal value in Ontario and leave out thousands of female workers, very often the lowest paid female workers in the most heavily female-predominated work groups, in the most typically women's work groups. His proposal, in terms of scrapping subsection 7(2) and complaining that it is out of order, is essentially to leave these workers out. I do not believe that is what he wants. I cannot believe that is what he wants.

Mr. Polsinelli: That is not my proposal.

Ms. Gigantes: How else would you deal with them then, Mr. Polsinelli?

Mr. Polsinelli: It is not my proposal to leave out these workers. As a matter of fact, I strongly agree that a mechanism has to be found to accommodate this type of problem.

Ms. Gigantes: Such as what?

Mr. Polsinelli: As a legislator, I am sure Ms. Gigantes has to be aware after many years of experience here that legislation has to be precise. We cannot have inconsistent statements in legislation. And you cannot pass legislation on broad general principles. That is why the ministry put forward a bill that was specific. This gearing of the bill by the opposition parties, is rendering it unworkable. This is just one more example of where it is unworkable. We passed one amendment two weeks ago. Now you are dealing with another amendment that is inconsistent with that section. I suggest that it is inappropriate.

I agree with the principle behind subsection 7(2). I think a mechanism has to be found to take care of private day care workers--

Ms. Gigantes: Such as what? You have had long enough to think about it.

Mr. Polsinelli: --where there is no comparison available, but this is not it.

Ms. Gigantes: Such as what?

Mr. Chairman: Were you finished, Ms. Gigantes? I want to go to Mr. Charlton.

Ms. Gigantes: Yes.

Mr. Charlton: Mr. Polsinelli's point is a useful one for us to discuss, but I think if we are going to discuss it, we should discuss it in the broad context of everything that has been amended so far and not in the narrow context of subsection 3a(1). That is where Mr. Polsinelli's problem arises.

Mr. Polsinelli: It is not my problem.

Mr. Charlton: No? You did not even take the time to look at section 3.

Mr. Polsinelli: It is not my problem; it is a point of order.

Mr. Charlton: Subsection 7 (2) is in no way inconsistent in legal or any other terms with section 3 of the bill, which reads, "The purpose of this act is to eliminate gender-based discrimination in compensation."

It does not say anything about comparisons with males or anything else. Is there anybody in this committee who can honestly tell me the private day care worker that Evelyn was talking about is not being paid compensation on the basis of gender discrimination? Can anybody tell us that?

Mr. Polsinelli: You fail to appreciate what the point of order is.

Mr. Charlton: No. To comply with section 3 of the bill, as amended, subsection 7(2) is necessary or the act will never be enforceable.

Hon. Mr. Wrye: So that I am clear, you are on to a private day care worker now. Let me pull you back at least to the supposed parameters of this bill. Let us try a librarian. That causes, I think, the same problem Ms.



Gigantes states we have with the child care worker. You are correct. There is no doubt about that. You now have a public sector librarian with no one to compare herself to and you propose that--I do not understand. What do you propose will now happen?

Ms. Gigantes: The public sector librarian can be compared with other people and has been under federal legislation.

Hon. Mr. Wrye: But may not be able to be compared within an establishment. That is what your section 3a says.

Ms. Gigantes: When we are talking about the public service librarian, the employer is the government. If you are talking about a municipal librarian, you are talking about the municipality that provides the funding.

Hon. Mr. Wrye: What if it does not? What if it is a separate board?

Ms. Gigantes: Then it is a separate board, but it has responsibilities through the municipality. Mr. Polsinelli has identified the difficulty here. When you get into a comparison--you are going to have the same problems when you bring in your bill, if you ever do--you have to look at privately set-up services, such as nursing homes and day care centres, where the overwhelming preponderance of the service providers is female.

Hon. Mr. Wrye: Where do they now go looking? Where does a nursing home or a school board go looking?

Ms. Gigantes: With a school board there is no problem, because a school board has a wide enough range of employees that there will always be comparisons.

Hon. Mr. Wrye: Perhaps a very small one does not. Try a nursing home. Where does it go looking?

Ms. Gigantes: If the women who work in the municipal homes for the aged are compared to the men who work there, and if it is found that their work is undervalued, then the commission looking at whether there needs to be an adjustment made to female wages in private nursing homes, because of undervaluation, may very well take a look at deciding whether there is undervaluation at the municipal homes for the aged. It may decide how much of an undervaluation there is by looking at the determination that has been made in a natural comparison in a municipality where the female employees in a municipal home for the aged have actually had their work compared.

In its wisdom, the commission would say: "All right. We have private nursing homes. We have to make an adjustment of this kind on the basis of wage levels of this kind for municipally operated homes for the aged, so we should take a look at the nursing home situation we have in front of us and perhaps set an overall kind of rule of thumb across the province. Perhaps we will decide on a locale-by-locale basis, comparing with regional municipalities or municipal structures in the area."

The commission has some discretion in this, but one way or the other, we have to provide for these workers. We all know that. If you can suggest a better way of doing it, let us hear the better way, but I have not heard one.

Mr. Polsinelli: Ms. Gigantes has not seen the government way of doing it because she has not had the patience to wait for the legislation to be introduced in the House. The reality is that the opposition members have amended this bill and have now proposed a section that is inconsistent with a previously passed section.

Mr. Chairman: That is your position, which is your point of order.

Ms. Gigantes: We do not have a point of order.

Mr. Chairman: There has not yet been agreement on the inconsistency you speak of.

Mr. Charlton: Perhaps you would like to rule whether there is a point of order.

Mr. Chairman: When you have completed the debate on it, I would be happy to indicate the chairman's feelings. He tries to bring fairness and equity to all these debates, as you well know.

Mr. Gillies: Speaking directly to the claim, I do not believe Mr. Polsinelli's point of order is valid. Section 3, subsection 3a(1) and subsection 3a(2) are purpose sections that lay out the principle and the intention of the legislation. Subsection 7(2), the amendment as proposed by Ms. Gigantes, is a specific direction regarding the mechanism for setting up and implementing the bill. It states what happens in a specific instance and in certain conditions.

In my years here I have seen many pieces of legislation discussed in committee where there may be, for specific purposes, variants from the general description given in the purpose section. As an example, and I stand to be corrected--in fact I would be grateful if legislative counsel would speak to any precedents that he might recall--I recall when I held your exalted position as parliamentary assistant and was steering through committee a bill to eliminate the use of lie detector devices in places of employment.

Hon. Mr. Wrye: I thought that was when you were still arguing about what the composite test was all about.

Mr. Gillies: Are we going to carry on the subsection 1(1) filibuster? That was many nightmares ago, Minister.

Hon. Mr. Wrye: That was many policy changes ago at least.

Mr. Gillies: In that specific piece of legislation, the purpose section of the bill simply stated that the bill was to eliminate the use of lie detector devices, as defined, from places of employment in the province. Later on in the bill, there was a feature that laid out how police forces under certain conditions were allowed to use them with respect to their employees.

If it is the principle that Mr. Polsinelli believes is valid, then certainly that feature of that legislation was invalid. I am sure that if we were all to think about it, we could think of many other examples.

Ms. Gigantes: Could we have your assistance, Mr. Chairman? What we have raised is a concern of Mr. Polsinelli's. He wants to make a point of order, apparently, when we take this matter back into our consideration.



Sections 7 and 8 have been stood down in this committee, and I suggest we move on.

Mr. Chairman: Mr. Gillies did request to hear from legislative counsel regarding this matter. Mr. Gillies, are you satisfied?

Mr. Gillies: Without wishing to take too much time on this, I would not mind hearing whether legislative counsel can confirm or deny that the point I make is valid: that the purpose of a bill as laid out in the general purpose section does not necessarily speak to every eventuality and every variance that may occur later in the body of the legislation. I believe that is the principle on which Mr. Polsinelli is basing his point and I believe such variances are quite common.

Mr. Revell: I cannot answer that question off the top of my head.

Ms. Gigantes: Mr. Chairman, may I suggest that we get your guidance to get on with our work?

Mr. Chairman: If you want a ruling of the chair with respect to the admissibility of the amendments based on the arguments put forward by Mr. Polsinelli, I am prepared to give that now. I would, however, favour awaiting our meeting tomorrow before giving a final ruling. I would like to look at it more carefully, but if I am pressed into a position now, I will give you a ruling now. The committee can then decide what they wish to do with it. In other words, you can challenge the chair. This committee has been known to do that on occasion.

Ms. Gigantes: Why do we not just get on with it?

Hon. Mr. Wrye: It has all been discussed. We are ready to move on. Where are we?

Mr. Chairman: We are prepared to move on to sections 9, 10 and 11, if that is the wish of the committee.

Hon. Mr. Wrye: The government has a little problem with that. As far as we are concerned, this is our problem with standing down sections 7 and 8 with the opposition's ad-libbed amendments, as they try to make, as my parliamentary assistant points out, some sense of this kind of unreality. We are not on an amendment on section 9. It seems to me we are on section 8 of the bill, if I can drag the opposition back to the legislation for a minute. They may not like it, but I think we are going to have to debate section 8 for a little while.

Ms. Gigantes: We do not have to debate anything we do not want to. You may find it very strange to learn this, but the committee decides what to do.

Hon. Mr. Wrye: The government members may want to explain why--

Mr. O'Connor: The majority on the committee will decide what we are dealing with here, not you.

Hon. Mr. Wrye: That is right. After it hears from all three parties.

Ms. Gigantes: On a point of order, Mr. Chairman: We have decided to stand down sections 7 and 8. I do not think the minister has got that message yet.

Hon. Mr. Wrye: That is your amendment to section 8.

Ms. Gigantes: No. Our decision was to stand down sections 7 and 8.

Mr. Charlton: We stood down the whole sections.

Mr. Chairman: All amendments thereto have been stood down as well, and I indicated to you that we were moving on to sections 9, 10 and 11, which involve the proposed amendments on the part of the third party. Ms. Gigantes was in the process of moving those, or speaking to them.

Ms. Gigantes: I will move them.

Interjection: That is what I thought you said.

Mr. Chairman: That is what I thought I said as well.

Hon. Mr. Wrye: You are not standing down the amendment?

Mr. Chairman: We are standing down all of sections 7 and 8 including amendments and subamendments at this time.

Hon. Mr. Wrye: Let me be clear. I am not trying to be provocative.

Ms. Gigantes: Oh, no.

Hon. Mr. Wrye: In my absence, while I was in the Sault, you got far enough to move an amendment to section 7 of the bill, and the amendment became a section 7 and a section 8, right? Where then are the amendments to the present section 8, or are we renumbering the present section 8 as section 9?

Ms. Gigantes: If the minister cannot read our amendments, perhaps he should allow his parliamentary assistant to guide this discussion.

Hon. Mr. Wrye: With all due respect, subsections 8(1) and (2) in the bill talk about exemptions. The section 8 in your amendment talks about a fund. They are different.

Ms. Gigantes: When I moved the amendment in the minister's absence, because I could not move it in his presence, I moved that sections 7 and 8 of the bill be struck out and that two sections, numbered 7 and 8, be substituted therefor. My understanding is that this committee has agreed to stand down consideration of sections 7 and 8 of the bill.

Mr. Chairman: That is correct.

Hon. Mr. Wrye: I was a little surprised that something which was clearly a different kind of section 8 is--I thought you would be renumbering from then on. I apologize.

Ms. Gigantes: You had time to look at the Hansards if you wanted to know what we had done, or any one of your colleagues might have reported to you what this committee had achieved in your absence.

Hon. Mr. Wrye: I thought the members of this committee--and their will is always supreme--might have wanted to recognize temporary labour shortages before they, in another bizarre move, brought in equal pay for work of equal value, pay equity or whatever, in areas where there is--



Ms. Gigantes: If the minister looks at the Hansard or listens to the tape, he will discover that in presenting and arguing for the motions which I presented in his absence, because he could not be present, I discussed the content of section 8 as written. There was consensus in this committee, in the majority, that section 8 should be done away with. That is the import of the motions I moved to sections 7 and 8. I made it clear to the committee that is the import of my motion, and I think that is where we should leave the matter.

17:40

Hon. Mr. Wrye: That is fine. I understand that now, and it was in my absence. It is unfortunate that parliamentary courtesies that are usually offered were not offered in this case.

Ms. Gigantes: Oh, poop off.

Mr. D. R. Cooke: On a point of order, Mr. Chairman: Maybe I am misunderstanding what Ms. Gigantes is saying. I think she is saying she moved sections 7 and 8 be repealed and replaced with her proposal for them.

Ms. Gigantes: Yes, and I discussed the fact that what we were dealing with--

Mr. D. R. Cooke: However, there is no consensus yet. It has not been voted on.

Mr. Chairman: No, that is the intent of her motion. When we stood down 7 and 8, we did just that; we stood down both sections.

Interjection: The consensus is to stand it down.

Mr. Gillies: I think we understand each other. Mr. Cooke is right; we have not voted on sections 7 or 8.

Mr. Chairman: No, we have stood them down.

Mr. Gillies: Ms. Gigantes's position is known and our party's position was known with respect to section 8, but I thought you had stood down 7 and 8 of the bill and the amendments thereto and then moved on. I do not think there is any particular disagreement.

Mr. Chairman: Absolutely. I seem to be having difficulty in communication today, perhaps because it is a Monday in November. Sometimes they can be very difficult.

I then suggested, as the follow-up to the decision the committee had made, I was going to move to Ms. Gigantes with respect to sections 9, 10 and 11 and the third party amendments thereto, since we had stood down 7 and 8 in their complete sense, including amendments.

Mr. Polsinelli: We cannot vote on them.

Mr. Chairman: I will now move to Ms. Gigantes, or at least attempt to. After about 10 minutes of debating, we are back again.

Hon. Mr. Wrye: I am sorry. Mr. Chairman, it seems to me, if I am correct, the committee wishes to amend section 7 with two different new sections. Possibly it is the effect of your amendment to move a new section,

but it becomes two sections, renumbered 7 and 8. Yet somehow along the way, what has also been slipped in is an amendment to a completely different section.

Mr. Charlton: You have not read what was moved. You are out of order. The motion that was moved says, "I move that sections 7 and 8 of the bill be struck out", so 8 has not disappeared. It has been dealt with in the motion that was moved by Ms. Gigantes last week. It has not been forgotten.

Ms. Gigantes: This means they are all stood down.

Mr. Charlton: You are out of order. You are talking about something that is not on the floor.

Hon. Mr. Wrye: You are trying to do two things.

Interjections.

Mr. Gillies: I think we are arguing needlessly.

Ms. Gigantes: Yes, we are.

Mr. Gillies: My understanding of the procedure we are going through is that the committee and the chairman have ruled or suggested that 7 and 8 be stood down and that we carry on with our work. At such time as we return to 7 and 8, all the things the minister is now talking about will be dealt with, whether 8 is struck out of the bill, whether there is a new section 7 or whether there is a new section 8. It is not that they will not be dealt with. My understanding is that they are being stood down and we are carrying on. So what is the argument about?

Ms. Gigantes: If the minister wants to impress us when we raise it again, he is at whole liberty to do it.

Mr. Chairman: The question will be opened up in its entirety when we go back. By standing it down, as you well know, we are simply not taking action on it at this time.

Ms. Gigantes: Mr. Chairman, I am going to put a motion on the floor.

Mr. Chairman: Can we go back to sections 9, 10 and 11?

Ms. Gigantes moves that sections 9, 10 and 11 of the bill be struck out and that the following be substituted therefor:

"9(1) An employer shall not reduce or restrain the compensation payable to any employee or reduce or restrain the rate of compensation for any position in order to achieve equal pay for work of equal value.

"(2) A complaint of a reduction or restraint of compensation shall be referred to the commission and, if the complaint is upheld by the commission, the employer shall pay compensation to the employees affected by the reduction or restraint at that rate to which they would have been entitled but for the reduction or restraint, as well as back pay equal to the amount that the employer failed to pay because of the reduction or restraint."

Ms. Gigantes: Because of the minister's concern about the elimination of sections in the bill, I would like to make it very clear that



we are replacing sections 9, 10 and 11 in this motion. Section 9 deals very much with the subject matter of my amendment. I believe the amendment we offer to the committee is a more fully rounded statement of the purpose intended in the original section 9.

In section 10, we are seeking to eliminate two subsections. Subsection 10(2) raised an enormous amount of concern because of what I believe to be its lack of clarity. We do not feel it is helpful to have section 10, especially subsection 10(2), which states in the original bill, "A pay equity plan prevails over the provisions of all relevant collective agreements." That seemed a very complex way of stating that we wanted to have equal pay adjustments made outside collective agreements and that they were not to be undermined in any sense by the collective agreement process. We have already made provision for that in the earlier amendments to which there was a subamendment by Mr. Gillies.

Section 11, which we move by this new section to eliminate, describes the mechanisms that were laid out in Bill 105. During our dry run through the bill, we discussed each and every section at some length and we had a good deal of discussion on section 11. We learned that section 11 begins a process that is laid out later in part III. It is a process we would like to change. We have made a deliberate effort to get away from the need for plan after plan, the amalgamation of plans, the staging of plans and all the concomitant complexities of the bill as presented to us by the government.

We want to get away from all that very complicated planning process involving all those layers of plans that presentation after presentation indicated people could not understand. When we had our discussions here in committee, it was not only the public who could not understand it; it also took us a good deal of time to figure out exactly what was intended by the government.

Further, in section 11, we have real reservations not only about the process being described here but also about the length of time over which this process might spin out. When we added up all the time allocations set for this layer after layer of planning--the minister will say that this is the worst possible case, but one has to think about worst possible cases--we learned that it might well be much longer than two years before the first equal pay adjustments or, as the bill calls them, pay equity adjustments, were made under section 11.

All in all, we are choosing consciously to reject section 11. We do so for two reasons. First, it begins a mechanism we have chosen to try to avoid. We have set out in a further amendment a mechanism that we feel is much simpler, more straightforward and understandable by all parties. Second, we wish to get rid of all the provisions for spinning out the planning process that exists in section 11.

17:50

In sum, my amendment 9 addresses the subject of section 9 as written in the bill. We wish to delete sections 10 and 11.

I guess everybody likes it.

Mr. Chairman: Is there further comment on sections 9, 10, and 11?

Mr. Gillies: I like the direction of Ms. Gigantes's amendments 9

through 15. The mechanism she has proposed is simpler, more easily understandable and perhaps, in the literary sense of the word, more elegant than the draftsmanship of the bill. I have no particular problem with that.

I had a proposed amendment to clause 11(2)(a), which dealt with retroactivity to the date of introduction, which I will not be putting. It is no longer necessary since that is in the New Democratic Party amendment to section 8. We can clear the books of that one.

Similarly, the amendment I would have proposed to clause 11(3)(a) deals with the same subject. With regard to the mechanism amendments for the coming sections, we will want to go over them very carefully section by section, but I think there is something really good there. I wanted to indicate to the committee where we stand on the amendments we had to section 11, which I feel are no longer necessary.

Mr. Polsinelli: Mr. Gillies's comments were already understood, given that he has accepted the NDP package and is not proceeding with his amendments. That was a bit redundant, Phil.

Mr. Gillies: Actually, we have a lot more amendments to the balance of the bill, but I think the mechanism proposed in the heart of the bill is a good one, one you might be commended to examine very carefully.

Mr. Polsinelli: I accept that you have rejected yours in favour of theirs; that has been said.

Mr. Gillies: That was only after I rejected yours, which was by far the worst.

Mr. Polsinelli: They were not really mine, but I thought they were kind of good myself.

I support the intent of the amendment to subsection 9(1), as it closely resembles the original section 9 of the bill. However, I have one question. For the life of me, I cannot understand what the word "restrain" means in subsection 9(1). I can understand an employer not reducing the compensation, but what does not restraining the compensation mean?

Mr. Chairman: I think Ms. Gigantes would like to respond to that.

Ms. Gigantes: It is precisely the kind of situation that, apparently, the minister contemplated in his objections to our earlier amendments to sections 7 and 8.

For example, the minister suggested that in a period when government funding to municipalities increases by around five per cent and inflation is more than four per cent, we might not be expected to pay increases as large as four per cent in Ontario municipalities, because we might be expecting pay increases to women that would be slightly more than pay increases to men in the general nature of annual wage increases. Therefore, we would not have to worry about whether one per cent would provide enough equal pay for work of equal value catch-up.

Out of all that complex thinking, I think the minister was really trying to say to us that if municipalities have to take on the job of paying a catch-up to provide equal pay for work of equal value, maybe they will keep their general wage increases to about two per cent. Then they will have more money left over to make sure that women get equal pay for work of equal value.



That is just another way of saying that men are going to have to pay in their annual wage increases for providing equal pay for work of equal value for women whose work has been undervalued by employers--in this case, employers funded by the provincial government--for many years.

It is precisely because of a sense that employers and, in fact, a provincial minister might think this way that we have drafted subsection 9(2). It is to allow an application by workers, whom I suspect would be workers in predominantly male groups, who felt their wages had been unfairly restrained so that their employer--read the provincial government at some level in this process--could provide a larger catch-up for women. This section allows for a complaint on that basis.

Mr. Polsinelli: I am quite surprised that Ms. Gigantes has such a lack of faith in the collective bargaining process, because what she is saying with this amendment is that if a union fails to negotiate a favourable collective bargaining agreement, then the union can apply to the commission on the grounds that the employer has restrained wages under subsection 9(1) of the bill.

Ms. Gigantes: No. What this requires--

Mr. Polsinelli: I am, quite frankly, surprised. You must admit it is a possibility that a union that fails to negotiate a good collective agreement will be arguing before the commission that wages were restrained because of pay equity.

Ms. Gigantes: No. What it means is that a union does not have to contemplate going to a strike when there is a case, which it feels it can document in a complaint before the commission, that the employer is holding back wage increases which it could and should be paying on the basis that it is using that package of money to provide equal pay for work of equal value, and an adjustment to that goal for women.

Mr. Polsinelli: How much should government interfere in the collective bargaining process?

Ms. Gigantes: It is not an interference.

Mr. Polsinelli: I can understand setting up regulations and laws to make it fair and equitable, but if you are telling me that if a bargaining unit or a union has failed to negotiate a good contract, then one of the outs is to apply to the commission because of a restraint under subsection 9(1), then I totally reject that.

Ms. Gigantes: What this section provides is exactly what it says it provides.

Mr. Polsinelli: What does "restrain" mean then?

Ms. Gigantes: There is the possibility of a complaint where a union feels it is getting offered two per cent when it should have been getting four per cent for all its workers in general wage increases. Instead of a strike, there exists the possibility for a complaint process.

Mr. Polsinelli: Frankly, why do you have a union? If you have a union and the union is saying, "We only got two per cent instead of four per cent," then what is the union doing there? If it is entitled to four per cent, it should be able to negotiate four per cent.

Ms. Gigantes: Then the commission will not find it has a case.

Hon. Mr. Wrye: So commissions are going to start setting collective agreements.

Ms. Gigantes: No.

Mr. Polsinelli: Sure they are under this legislation. The commission could conceivably be flooded with applications from individuals in the unorganized sector where a pay equity plan is in effect, saying their particular wages have been restrained. I do not see it as unreasonable to speculate that if there is an unorganized sector with 100 employees, where a pay equity plan has been implemented, and if the 60 or 70 men in that establishment do not get a salary increase which they feel is commensurate with their abilities, their experience and with whatever increase in the cost of living that has occurred in the past year, what would prohibit them from filing a complaint with the commission.

Ms. Gigantes: Let them file a complaint.

Mr. Polsinelli: What would prohibit them?

Ms. Gigantes: Nothing would prevent them.

Mr. Polsinelli: It is just a kick at the can where they have nothing to lose.

Hon. Mr. Wrye: Let the labour lawyers get into it.

Mr. Polsinelli: They could argue their wages have been restrained because of the pay equity plan. The commission could be flooded with hundreds, perhaps thousands, of complaints from individuals and from unions that have failed to negotiate good collective agreements.

I accept that the implementation of pay equity should not require anyone to reduce his wages, but when you put in the word "restrain," I suggest you are opening up a can of worms that, once in practice, will make labour lawyers awfully happy, because they are going to get rich with this.

Mr. Charlton: The minister and his parliamentary assistant are really displaying their naïveté here today. Section 9, as they set it out, which just talks about "reduce," is, in fact, the section that would be the heyday for the lawyers.

What does "reduce" mean? You are asking us what "restraint" means. What we have done in this amendment to section 9 is to clear up the question which the courts would be dumped on continually to clear up in every collective agreement where people had not kept up with the cost of living.

Is that not a reduction in real wages? Is not that the kind of legal game every labour lawyer in this province would be playing in the courts? What we have done is clear that question up by adding it into the section and referring it to a commission where the legal costs would be very limited, if there were any at all, and a commission that has been saddled with the expertise of understanding this process. Let us stop kidding around here and get on with the rest of the bill.

Ms. Gigantes: Call the vote.



Mr. Chairman: I should remind the members of the committee that we are scheduled to sit until 6 p.m.. The House apparently adjourned at 5:30 p.m.

Mr. O'Connor: It is not 6 p.m. and we are ready for a vote.

Mr. Chairman: I will call the vote. Then I would suggest we adjourn the committee following this vote so we will have a clean slate of business to proceed with tomorrow.

Mr. Polsinelli: I do not understand. Did she move a closure?

Ms. Gigantes: No. I asked the chair to call a vote.

Mr. Polsinelli: I think we have other speakers here, do we not?

Mr. D. R. Cooke: I have a question.

Mr. Chairman: I have no other speakers on the list. I have to say, in all fairness, anyone who gave an indication of wanting to speak was allowed to speak. After we have indicated we are going to take a vote, if you want to speak, I guess you have the right to speak.

Mr. D. R. Cooke: The problem has to do with Mr. Charlton's interpretation of the old section 9. Is Mr. Charlton telling us that "reduced" is less definitive than "restrain"? I do not understand that.

Mr. Charlton: That has been part of a major debate in the labour community for a decade now. What is "reduce"? Is "reduce" a dollar reduction in wages or is "reduce" when one loses real buying power, real dollars?

Hon. Mr. Wrye: What is "restrain"? It is great to call for a vote, but I have not heard any definition of what "restrain" is. In the case of a union, because of difficult times--and there are examples--if an agreement is reached that allows for a two per cent increase, does it then have a second run at it when it goes to the commission and says, "Hold on--"

Mr. Charlton: What does the section say? It says, "restrain because of equal value," not restrain because of a policy of the provincial government or because they have reduced transfer payments, or whatever else might be happening. It says, "restrain because of equal value."

Mr. Polsinelli: Mr. Charlton, I know some very innovative labour lawyers who could turn this into a great case for their clients.

Mr. Chairman: We have had a discussion around the words "reduce" and "restrain." We have an obvious disagreement with respect to the interpretation of those words. However, I will now call the vote.

Motion agreed to.

The committee adjourned at 6 p.m.





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Publications

J-37

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PUBLIC SERVICE PAY EQUITY ACT

TUESDAY, NOVEMBER 18, 1986



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Brandt, A. S. (Sarnia PC)

VICE-CHAIRMAN: Fish, S. A. (St. George PC)

Charlton, B. A. (Hamilton Mountain NDP)

Cooke, D. R. (Kitchener L)

Gigantes, E. (Ottawa Centre NDP)

Hart, C. E. (York East L)

O'Connor, T. P. (Oakville PC)

Partington, P. (Brock PC)

Polsinelli, C. (Yorkview L)

Ramsay, D. (Timiskaming L)

Rowe, W. E. (Simcoe Centre PC)

Substitutions:

Epp, H. A. (Waterloo North L) for Mr. Polsinelli

Gillies, P. A. (Brantford PC) for Ms. Fish

Marland, M. (Mississauga South PC) for Mr. Rowe

Clerk: Mellor, L.

Staff:

Evans, C. A., Research Officer, Legislative Research Service

Revell, D. L., Legislative Counsel

Witness:

From the Ministry of Labour:

Wrye, Hon. W. M., Minister of Labour (Windsor-Sandwich L)



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, November 18, 1986

The committee met at 4:32 p.m. in room 151.

PUBLIC SERVICE PAY EQUITY ACT  
(continued)

Consideration of Bill 105, An Act to provide Pay Equity for Employees in Predominantly Female Groups of Jobs in the Public Service.

Mr. Chairman: Members of the committee, I believe we are ready to get under way. The first order of business relates to a question raised by Mr. Polsinelli yesterday with respect to the appropriateness of proposed amendments by Ms. Gigantes.

Ms. Gigantes: Before we get into that, I wonder whether I can indicate to members of the Liberal Party how very impolite I consider it that they should not have informed anyone else that they had no intention of joining us on this committee and doing the work of this committee until the discussion on Bill 8 had finished.

It would have saved a lot of us a lot of time and we might have had the pleasure, as they did, of having heard much of the debate in the House on Bill 8. Instead of that, some of us sat here and waited for 25 or 30 minutes, with no word from any of the government members about their intention, which clearly was to see Bill 8 through. That would have been fine, if they had been polite enough to tell other people.

Mr. D. R. Cooke: It was our understanding that an arrangement had been made through our whip's office with all the other parties that there would be a presence in the House during the discussion of Bill 8. In any event, to make certain there was no misunderstanding, I entered this room at about 3:20 p.m. There were three staff members here. There were no members of the Legislature here. I informed the staff of what we were doing. I then informed the chairman, and it was my understanding, Mr. Chairman, that you were not particularly concerned about the fact.

Mr. Chairman: I was told. In response to that, I met informally with some members of your party, including the minister, who indicated to me that they were going to wait until the Premier (Mr. Peterson) had made his comments on Bill 8 and that they would then come back to this committee. I advised any committee members I saw during the interim period of the intentions of your party, but that was strictly on a very informal basis. I spoke to Mr. Gillies. I did not speak to Mrs. Marland and I did not speak to Ms. Gigantes. There were many I did not see. I was here at about 3:20 p.m. myself.

Mr. D. R. Cooke: Did you see Ms. Gigantes?

Mr. Chairman: I do not recall, but I certainly did not mention to her the intentions of your party at that point. It did make it awkward for some members of the committee who did not happen to bump into another member of the committee and receive the information that was passed on to me.

Mr. Gillies: We have lost about 45 minutes of committee time. Why do we not get to work and try to make it up before six o'clock? I am sure the members of the governing party will want to work along that much quicker and more efficiently because of this, and we will all share in that effort.

Ms. Hart: Because the end of yesterday was a little confusing, can you tell me exactly what we got to?

Mr. Chairman: We completed our deliberations on sections 9, 10 and 11. There was an understanding that we would get from the chair a firm ruling on sections 7 and 8 and on the proposed amendments by Ms. Gigantes. Although I had pretty well made up my mind yesterday, I said that unless it was crucial that you be given the ruling yesterday, I would prefer to wait until our legislative clerks could look at the matter and review it with me so that the ruling could be more firm. It can still be challenged by the committee, obviously. I have that ruling prepared for you now, which means we will then go back to sections 7 and 8.

Ms. Hart: I thought we voted only once last night. Did we not vote to put the question, when we had not voted on the question? Am I totally confused on that?

Mr. Chairman: To amplify my earlier remarks, we voted on the issue of sections 9, 10 and 11, which was a motion for deletion, to be replaced by a new section 9. It was understood by committee members that we would return to sections 7 and 8 following the chair's ruling with respect to the propriety of the amendments proposed by Ms. Gigantes. I think that is relatively simple, and that is what we did. You can ask a lot of questions about it, Ms. Hart, but that is the way it is.

Ms. Hart: I do not think I am missing something. We voted, I thought, on whether we would put the question on sections 9 and 10. My understanding of the procedure--

Mr. Charlton: You did miss something.

Mr. Chairman: I know that you can clarify this, Mr. Charlton, so I will defer to you.

Mr. Charlton: Most certainly. You are correct that at one point Ms. Gigantes did suggest a motion to call the question. The chairman said he had no further speakers on his list, so there was no need for that motion and he would call the question at that point. We proceeded to vote because no one else indicated a willingness to speak. We voted on sections 9, 10 and 11.

Mr. Gillies: The vote carried five to four.

Mr. Chairman: That is correct. I have checked with the clerk, and the vote at that time was five to four.

Mr. Gilies: It was to delete and replace. That was effectively what the motion called for. The motion to delete was entirely in order. There was nothing out of order at that point.

Mr. Epp: I was not here, but if I hear you correctly, you are saying you had a motion to delete and you accepted it, when, in fact, you cannot have a motion to delete. You can vote against a section or vote for it, but you cannot have a motion to delete.



Mr. Chairman: We had a motion to delete and replace.

Mr. Gillies: That is quite in order, Mr. Epp; it happens all the time.

Mr. Charlton: Where have you been for the past 10 years?

Mr. Epp: You replaced three sections with one?

Mr. Charlton: That is right. That is still a legitimate procedure.

Mr. Gillies: The procedure we followed yesterday under the guidance of our chairman stands unless it is challenged. Are you going to challenge the chair?

Mr. Epp: I was just inquiring and pointing out the procedural niceties we have followed here for 100 years.

Mr. Charlton: Those are the same procedural niceties we followed yesterday.

Mr. Epp: I have not been here all those years, but--

Mr. Gillies: You have not been here 120 years; it just seems that way. I thought the procedure our chairman guided us through was in order and, I suppose, on good advice from our clerk.

Mr. Chairman: I want to say to the members of the committee that if I feel there is any question about the direction in which the chairman is heading, I normally seek counsel and advice from the clerks and the legal department of the Legislative Assembly to determine the appropriateness of the decision I am about to make.

If I have to make a quick decision, I am quite prepared to do so, and I said I would do that yesterday in regard to Ms. Gigantes's amendments. The committee very kindly gave me 24 hours to review the decision I am about to release to you with regard to another matter. I am also prepared to do that as it relates to sections 7 and 8.

To the best of my knowledge, however, and with the concurrence of the assembly and the people therein who advise us, I have been advised that, as Mr. Gillies has indicated, we have proceeded in quite an appropriate fashion. There is nothing inappropriate about deleting sections and replacing them with other sections. It is done in this great hall on frequent occasions.

16:40

Mr. Ramsay: To clarify that, the chairman is saying sections can be deleted and replaced with other sections. However, can sections be deleted in total and then not replaced? That is what I am trying to find out.

Mr. Chairman: Yes. Quite frequently, it results in renumbering. To the best of my knowledge, it has been done on many occasions when I have sat here as a member of various committees.

Mr. Charlton: We go through this process all the time.

Mr. Chairman: It is done with great regularity.

Mr. Charlton: The Assessment Act was totally renumbered in 1980.

Ms. Gigantes: Are we ready to proceed?

Mr. Chairman: Yes. I would like to give my ruling so that we can go back to sections 7 and 8. There was a challenge to the chair yesterday and it was a point of order raised by Mr. Polsinelli. I regret he is not here to hear it at the moment, but he knew I was going to speak to the amendments to sections 7 and 8 proposed by Ms. Gigantes.

After very careful review, it is my opinion, as it was yesterday--and I indicated this to the members of the committee, but I also indicated I would delay the decision until today--that the amendment is in order and is consistent with the sections of the bill as passed to date. The sections passed previously outline the purpose contained within the bill and this amendment provides the means to achieve that purpose. In looking at the two sections in concert, I find them totally consistent and not inconsistent or in conflict as suggested by Mr. Polsinelli.

That was the point raised by Mr. Polsinelli. Therefore, I have to rule against his point of order. That is what the chair finds at this time. If there is any discussion on that point, I would be pleased to hear it or if there is a challenge the chair, it may be made.

Mr. Epp: I do not intend to challenge the chair at this point. Since I am pinch-hitting for Mr. Polsinelli, I want to say on his behalf that he regrets your decision very much.

Mr. Chairman: I fully understand. Mr. Polsinelli won one that the chair had put forward at some earlier point and now he has lost one. The chair tries to be fair, evenhanded and totally equitable in its decisions. I want Mr. Epp to know that.

Mr. Epp: I can appreciate the chairman's unbiased situation as the member for Sarnia, the former mayor of Sarnia and the chairman.

Mr. Chairman: Absolutely.

Mr. Epp: Nevertheless, I want to reiterate on behalf of Mr. Polsinelli his great regret that the chairman has pronounced his decision today because it is not in keeping with what he felt should be done.

Mr. Chairman: I appreciate those comments.

Mr. Gillies: I want to indicate support for the chairman's judgement. He is batting 1,000 these days after getting off to a fairly rocky start 10 weeks ago.

Mr. Epp: But that is out 10,000.

Mr. Gillies: His understanding of the procedure in this instance mirrors my own. I thought Mr. Polsinelli was on weak ground when he raised it and I still think so.

Hon. Mr. Wrye: Before we go on, I have a serious matter I want to raise with the committee. As minister responsible for what is left of this legislation, I am not prepared to allow this to continue. I raised this matter yesterday and I am going to raise it again today.



There is a different view of what happened with sections 9, 10 and 11, so I will let that go for now. Clearly, sections 10 and 11 have been deleted. There has been an amendment not to substitute a new subsection but an amendment to delete. That is out of order.

Now we are on sections 7 and 8 and magically, along the way, the member for Ottawa Centre (Ms. Gigantes) has moved to delete--

Ms. Gigantes: On a point of order, Mr. Chairman: What is the order being followed by the minister?

Hon. Mr. Wrye: The amendment--

Ms. Gigantes: Is the minister challenging the chair? He has only one option after the chair has ruled.

Mr. Charlton: Then he is out of order.

Hon. Mr. Wrye: I am not challenging sections 9, 10 and 11. I am turning to section 7, which is what you wish to do. On a point of order on the amendment to sections 7 and 8, I am asking the chairman for a formal ruling on whether section 8 of the bill is deleted, not substituted, by the amendment.

Mr. Charlton: We will not be able to answer till we vote.

Hon. Mr. Wrye: I am sorry, Mr. Charlton is wrong. I understand Ms. Gigantes has put forward an amendment to section 7 of the bill. The government does not support the amendment, but it is to section 7, not to section 8. Section 8 is not being amended in Ms. Gigantes' amendment; it is being deleted.

Ms. Gigantes: That is right.

Hon. Mr. Wrye: Under the rules of parliament under Beauchesne, it cannot be done. The amendment on the floor applies to section 7 of the bill. The chairman cannot say, "Oh, and while we are it, we will amend section 8 by deleting it and we will amend section 13 by deleting it" and on and on.

Ms. Gigantes: Is the minister challenging the chair?

Hon. Mr. Wrye: Mr. Chairman, before we--

Mr. Charlton: The chairman has already ruled on this matter.

Interjections.

Hon. Mr. Wrye: No, this is on a different point of order.

Mr. Chairman: I have the first point of order, if I may interrupt the minister. It is Mr. O'Connor followed by Mr. Gillies. I will try to take the minister in order.

Mr. O'Connor: I am extremely curious about the procedure going on here. As I understand it, the minister is here at the invitation of this committee. He is not a member of this committee. He is here for our guidance to answer questions and assist us in the deliberations of Bill 105. Can the chairman rule on the question of whether he has status to put points of order, challenge the chair and raise procedural matters in the manner in which he is doing? He cannot do that. He is not a member of our committee.

Mr. Charlton: He is not only out of order, but he is not--

Interjections.

Mr. Chairman: It is not uncommon, however, to allow a minister who is here at the invitation of the committee to have a certain flexibility. It is his bill, brought forward by the government. Surely the members of the committee will agree that the minister has some input which out of common courtesy is normally looked upon by the members of the committee as reasonably valuable.

I would say that for the minister to raise points of order may be stretching the point a little, but it is not out of order for the minister to contribute to the deliberations of this committee.

Ms. Gigantes: We would welcome it.

Mr. Charlton: On the point of order, Mr. Chairman.

Mr. Chairman: Can I take them in order? I must go to Mr. Gillies--

Mr. O'Connor: The minister is here to contribute to the contents.

Mr. Chairman: This is a point of order as well. Then I will go to Mr. O'Connor.

Mr. O'Connor: My point is that sure, he is here to contribute to our deliberations with respect to the contents of the bill, what it says or does not say and so forth.

Mr. Chairman: Yes.

Mr. O'Connor: When we get into procedural questions and points of order, it is not his place to become involved in that discussion because he is not a member of this committee. I request the chair to exercise discretion in cases where he does that and ask him to refrain--

Mr. Chairman: I will try to caution the minister if he goes over the line, but with respect to the comment Mr. O'Connor just made on the content of the bill, it would be very difficult for me to rule that the minister is out of order when he is talking about the content of his bill and deletions of certain sections and additions of others. Surely that has to do with the content of the bill.

Ms. Gigantes: No, that has not been what he is--

Mr. O'Connor: He said he was on a point of order.

Mr. Chairman: The minister is totally in order up to this point.

Hon. Mr. Wrye: I will not go any further than that.

Interjections.

Mr. D. R. Cooke: Perhaps he could be allowed to finish.



Mr. Chairman: I have been taking points of order. I have heard Mr. Ramsay's point of order. Mr. Cooke, I took your point of order. I am going to Mr. Gillies and then to Mr. Charlton, in order.

Mr. Gillies: I might note at 4:45 p.m. the second Liberal delaying tactic on this bill exercise today is working admirably. Congratulations.

Mr. Epp: I do not know what--

Interjections.

Mr. Gillies: The problem we have is that I do not think there is any particular disagreement with the minister having leeway to comment on the legislation before the committee. However, when he slides under that guise into noting that, in his opinion, the committee is out of order in what it has chosen to do with sections 9, 10 and 11, when the committee under the chairman's guidance had decided it is in order, it is an interesting exercise. The minister is not a member of the committee, so he cannot challenge the ruling of the chair.

If we regard him as a witness before the committee, I have to regard leaving the comment on the floor as contempt of the committee. As long as the minister restrains himself and draws his comments into opinions of the effect of various features of the bill, that is fine. However, when he starts cavalierly saying the work of the committee is out of order when the committee has decided it is in order, it is contemptuous and will require a ruling from the chair.

16:50

Mr. Charlton: On the same point, Mr. Chairman, I am going to have to speak a bit harshly to you, sir. The vote Mr. Gillies has raised and the point of contention the minister is trying to raise here is a point that was previously raised by Mr. Epp and was ruled on by yourself. Your ruling is not debatable. Either they challenge the chair or we proceed, but we are not here to discuss your ruling, because chairman's rulings are not debatable. Either one of their members of the committee moves a challenge to the chair or we proceed, but we stop the foolishness and you make the rulings.

Mr. Chairman: May I say something briefly in response to Mr. Charlton's comments?

Mr. Charlton: You have made the ruling.

Mr. Chairman: I did make the ruling, and then we proceeded to deal with the business of sections 7 and 8, but you will recall the minister was in full flight in his remarks. He is quite free to say what he wishes. At the point I felt he was out of order, I would have challenged him, as chairman. In anticipation of the minister's remarks, I did not know what he was going to say. I cannot read his mind. If the minister proceeds down a path that I think is out of order, then I will--

Mr. Charlton: I am suggesting he already has. He was speaking to your ruling, and rulings of the chair are not debatable. He can challenge it or we shall proceed.

Mr. Chairman: I interpreted his comments to be speaking to certain sections of the bill.

Hon. Mr. Wrye: I was trying to be helpful.

Mr. Chairman: He recognizes we are now going back to sections 7 and 8 and Ms. Gigante's amendments. That is what I understand the minister is speaking on. If he in some way detours from that direction, I will call him to order, and I would appreciate your guidance in that respect.

Mr. Charlton: That is not the question in point. Mr. Epp raised the question of our moving amendments that deleted and substituted therefor. You ruled on that question. Now the minister is attempting to debate that question. Your ruling is not debatable. You have to rule the minister out of order.

Mr. D. R. Cooke: My point of order, Mr. Chairman, is that Mr. O'Connor raised a point of order. He raised the point that the minister may speak to substantive matters, in his view, but should not be allowed to speak to procedural matters. You made a ruling on that, and then Mr. Gillies raised the same point of order a second time, in fact, attempting to challenge your ruling. I do not know whether it is a delaying tactic on the part of Mr. Gillies. I suggest his attempting to raise the same point of order again immediately after you had made that ruling is out of order.

Mr. Chairman: Thank you. Are we ready to proceed with the minister's comments, which I will listen to with great interest? Then we can go on to sections 7 and 8.

Hon. Mr. Wrye: I want to indicate at the outset that I am not speaking about the ruling you have made, which was on a proposal Mr. Polsinelli raised on subsection 7(2) of the bill. If I can put it this way, Ms. Gigantes has moved an amendment to sections 7 and 8, moving that they be struck and that a substitution be made. The substitution has two new sections, but the substitution only speaks to the substance of the government section 7. It does not speak to the substance of the government's section 8.

Consequently, the government argues you must delete section 8 when you call for a debate on it and that, in essence, Ms. Gigantes wishes to have a section 7 and a section 7a, sections which will be renumbered appropriately once the committee's deliberations have been completed.

As a member of the government and as a minister with responsibility for this bill, I ask you whether it is in order on these amendments to take out sections? Do we have here, in essence, a motion to delete, which I understand is not in order and is against the standing orders.

You simply vote against that section when the section is called. You cannot do that; otherwise, you move to substitute for a section, perhaps section 1 and any section you wish to delete. You say, "We move to delete section 1 and 18 other sections and substitute therefor," and then make a simple substitution. In essence, the content of those other sections was never subject to debate in committee. I think that would be most unfortunate. I also suspect, and ask for the chairman to indicate, whether that is properly in order.

Ms. Gigantes: Had the minister been here when the amendments were placed he would have noted--and it is still available to him to note through reading the transcript of this committee, or listening to a tape of this committee, or however he wishes to inform himself, or asking some of his



colleagues on the committee--that in placing my amendments and in beginning the discussion of my amendments, I raised argument about section 8. I invited discussion about whether section 8 should be in there or not. The minister is not going to tell me that I do not have sections 7 and 8. I have new sections 7 and 8. He does not like them. That is tough. We have a section 7 and a section 8 on the table, and I propose that we begin to deal with them. We have an amendment, and I believe a subamendment will be placed. I would like the chair to have us proceed.

Mr. Chairman: Does anyone else wish to make a comment on sections 7 and 8 before I read them?

Mr. Epp: I am concerned about your earlier ruling and I wonder whether you want to put the whole thing in abeyance?

Mr. Chairman: No.

Mr. Gillies: Mr. Chairman, as has been stated repeatedly, your rulings are not debatable. If Mr. Epp wishes to challenge your ruling, he should do so.

Mr. Epp: I am concerned that a precedent be set here which is not in keeping with the other precedents that we have had. I am wondering whether you need some time in order to check Beauchesne and some of the others with respect to this important decision that you are making.

Ms. Gigantes: The Liberals do not understand the rules. Everybody else here does.

Mr. Chairman: With all due respect to my colleague, for whom I hold the highest esteem, respect and admiration, I have to say to him I have taken the necessary time to review the decision I have made and I will stand by that decision. Any question with respect to the decision can be challenged by the committee and I would consider such a challenge to be in order, but it is not debatable and we are doing that now.

You can challenge me or we can proceed with the business and the orders of the day, which are sections 7 and 8. In response to the question, you are not asking for a ruling at this point, but the minister raised the question of whether the substitutions of sections 7 and 8 as proposed by Ms. Gigantes are in order. My best advice at the moment is that they are in order. You may not like the amendments, but they are in order. In other words, sections 7 and 8 can be substituted by a new 7 and 8.

Mr. Epp: I can appreciate the advice you are getting, but I am still of the opinion that you are on very weak ground and at this point I would challenge your ruling.

Mr. Chairman: Fine. It is not debatable. Those in favour--

Mr. Epp: Can we have 20 minutes so we can have a chance to discuss the issue?

Ms. Gigantes: No.

Mr. Chairman: No. I have business to conduct here.

Mr. Epp: As you know, the rules of the House permit the committee to have 20 minutes in order to discuss these things. If we ask for a recess for 20 minutes, I think it incumbent upon the chair to grant that.

Ms. Gigantes: Not when the chair has been challenged.

Mr. Gillies: My understanding of the standing orders is that the member can have a recess prior to a division if he wishes. That is my recollection. The record should show, for Hansard and for the people who are not watching this proceeding on television, that there is a full complement of the members of the committee here present. It is not a question of any party having to gather its members for the vote. This is the third example today of the Liberals' wish to delay the proceedings of this committee.

Mr. Epp: I want respectfully to suggest that is not the case, but it is incumbent upon the members of the government to be able to discuss the full implications of this. It is for that purpose we need the 20 minutes. It may be a shorter period of time. We may not need the 20 minutes, but the rules of the House do permit us to have up to 20 minutes to discuss this.

Mr. Chairman: My understanding is that it is for the 20 minutes, if requested, in spite of the full quorum that is here. I appreciate the arguments put forward by various members of the committee. The 20 minutes, in spite of the full quorum, have to be granted; so I will grant the 20 minutes. We will resume in exactly 20 minutes for a vote.

The committee recessed at 5:01 p.m.

17:20

Mr. Chairman: Since everyone is now here and we have a full quorum, will you agree to resume our discussions?

Agreed to.

Mr. Epp: I want to thank you for permitting us to confer with my colleagues on the next vote coming up.

Mr. Chairman: We are most pleased to extend any courtesies possible.

The motion before the committee at this time is, shall the decision and the ruling of the chairman be sustained?

The committee divided on the chairman's ruling, which was sustained on the following vote:

Ayes

Charlton, Gigantes, Gillies, Marland, O'Connor, Partington.

Nays

Cooke, D. R., Epp, Hart, Ramsay.

Ayes 6; nays 4.

Mr. D. R. Cooke: That is right down party lines. Is that not interesting?



Mr. Chairman: That may come as a shock to you, but it does not surprise the chair at all. I will turn to Ms. Gigantes. Do you want to defer to Mr. Gillies? I am trying to read signs here.

Mr. Gillies: It is not that hard.

Ms. Gigantes: Yes.

On sections 7 and 8:

Mr. Gillies: I would like to move a subamendment arising out of our discussions yesterday. I relied on our excellent legislative counsel to propose the appropriate amendment which would achieve what our party is looking for in terms of section 7. To recap briefly, this is the minimum one per cent of payroll per year adjustment--I think the committee is unanimously agreed--with a lump sum payment, which we propose will remain at one per cent.

Being very sensitive to the concerns raised by Ms. Gigantes yesterday that we do not want this to be open-ended nor do we want the transitional phase-in period to go on for ever, because there has to be some end to the process, I am proposing a five-year period.

Mr. Chairman: Mr. Gillies moves that subsection 7(1) of the bill, as set out in Ms. Gigantes's motion, be amended by adding thereto the following clause:

"(ea) shall provide that all adjustments in rates of compensation that are necessary to achieve equal pay shall be completed within five years of the effective date."

Mr. Gillies: The reason I am putting this subamendment is that we have some concern with the original amendment proposed by the New Democratic Party, which would see the three per cent adjustment in one year. We are concerned about the possible effects, especially on agencies outside of the immediate government, in terms of their budgeting. I believe this effects a reasonable period for adjustment, in other words, with no unnecessary delay but a reasonable delay.

At the same time, it builds in a flexibility which we find desirable, the flexibility being that an agency, with the agreement of the commission, may decide on a one per cent adjustment one year, three per cent the next and one per cent the third year, or it may decide to take the bulk of the added expenditure in the first year. We think it works rather nicely all the way around.

Mr. D. R. Cooke: I am trying to recall what happened to Mr. Gillies's previous amendment.

Ms. Gigantes: It is on the floor.

Mr. D. R. Cooke: It is still on the floor?

Mr. Gillies: This is a subamendment.

Mr. D. R. Cooke: This is a subamendment to that amendment?

Mr. Gillies: Or an addition, if you will.

Mr. Epp: That has not been voted on yet.

Mr. Gillies: In the order of voting, you vote on the subamendments first, then the amendment and then the main motion. This has to be on the floor and dealt with before we can move to the main amendment.

Ms. Gigantes: On behalf of our party, I would like to make clear our support for the subamendment to the amendment. We feel that five years' completion time for the achievement of equal pay for work of equal value is a reasonable period. While we would much prefer to have three per cent of payroll devoted on an annual basis, we will deal with that when we come to it.

Hon. Mr. Wrye: I am missing something here. I understand clause (ea). I understand the intent of this is simply that pay equity be achieved in five years. If this amendment carries, what does that replace within Ms. Gigantes's main amendment?

Mr. Gillies: That is a good question.

Mr. Chairman: I would like to take some time on this, because its flow is very important. I think part of the minister's concern is the way the numbers will fit into the amended motion. It is important that all the members of the committee understand this. I am going to give Mr. Gillies a bit of leeway in discussing not only the amendment but also how that will relate to the main motion. I am suggesting this so everyone can understand what is being done.

Mr. Gillies: I will try to do that. I hope it will not take too much time. This is the way it would work: The subamendment inserts the new section with the five-year time limit. In my view, and as I am obviously proposing amendments I hope will all pass, this follows on my original amendment, which amends Ms. Gigantes's motion by deleting "three per cent" in clause 7(1)(d) and subsection 8(2) and substituting "one per cent" in each case.

As long as the agency recognizes a five-year time frame for the achievement of pay equity, we believe the minimum of one per cent per year and the one per cent lump sum are the responsible way to proceed. If the subamendment, the new clause with the five years, were to pass but my other amendment substituting one per cent for three per cent did not, then you would have a situation where Ms. Gigantes's wish of the three per cent adjustments would be in effect but you would also have a five-year time limit.

Hon. Mr. Wrye: When the committee votes, it will be voting on only this for now. Then we will go back to the three per cent and one per cent.

Ms. Gigantes: That is correct.

Mr. Gillies: That is right. The committee has three decisions to make with regard to sections 7 and 8. First, do we want the subamendment with the five-year time limit? Second, do we want one per cent or three per cent? Third, do we want the overall model proposed by Ms. Gigantes?

Mr. Chairman: Thank you, Mr. Gillies. That is what I wanted you to do. I thought it would fall into some kind of logical sequence only if you were to take that discussion through to its logical conclusion.

Mr. Gillies: Thank you for the opportunity, Mr. Chairman.



Ms. Gigantes: Are you calling the subamendment?

Mr. Chairman: I will call the subamendment if there are no other speakers on it. The subamendment has been explained by Mr. Gillies as putting a five-year cap on it. We understand that. Are you ready for the vote?

Ms. Gigantes: They are not ready.

Mr. Epp: We have some questions on this. My colleagues want to start.

Mr. D. R. Cooke: I do not have any questions. I want to indicate that if the NDP amendment passes, which I hope it will not, and if the first subamendment of the Conservatives passes as well, this is a reasonable cap. Looking at the document that was given to us yesterday about eliminating the wage gap, that scenario is very unusual; it is not likely to occur, but if it ever did, this sort of cap would prevent it from dragging on into the 1990s.

17:30

Ms. Hart: I have a question of Mr. Gillies. Can you tell me the mechanism? I know it is difficult, because you do not know whether it is going to be one per cent or three per cent, but you have a section that says, "shall provide," that all these adjustments shall be made within five years. What if they are not?

Mr. Gillies: If they are not, then all the other provisions of the bill regarding complaints, enforcement and so on would come into effect just as in the unamended bill.

Mr. D. R. Cooke: May we presume from the document Ms. Gigantes prepared, to use your actual situation, that would have to suddenly come down to zero in the year 1991 and that all the work would have to be done in the last year?

Mr. Gillies: We are assuming that in the education and enforcement surrounding the bill there would be a heavy onus on the minister to communicate to all those covered by the bill that there is a five-year time frame, and while in any given year the adjustment need be only over one per cent, they are going to have to realize that it is in their interest to achieve pay equity. In fact, they are required to achieve pay equity within five years. A degree of planning for that is required.

There will be a considerable onus on the commission and on the ministry to ensure it has not been left hanging to the extent that in the fifth year there are people who have not met the requirements of the legislation. That is in large measure the case with many pieces of legislation, and I think it is well within the capabilities of the minister and the commission to ensure that the bill is complied with.

Mr. Epp: I have a question of Mr. Gillies. Does he not believe that by having all this flexibility in here, he is going to have a lot of chaos and uncertainty out there? It is nice to have flexibility, but if you end up having decisions deferred, etc., because of the chaotic situation that develops, I do not think you are lending any great support to the system itself.

Mr. Gillies: I do not think that to be the case. You can go in one or the other direction from what I am proposing. You can go in the direction

of requiring much larger percentage increases of those covered by the legislation year by year, or you can go in the other direction completely and say a minimum of one per cent per year and hope you might have pay equity in 10, 11 or 12 years. I am trying to strike the middle ground. I am trying to say we want pay equity achieved within a certain period of time, but we believe a measure of flexibility can be afforded to do that.

In keeping with a much-repeated concern of your colleague Mr. Callahan, when he was in this committee--a concern that our party believes is legitimate--I might add that by constructing a system that is flexible, understandable and not frightening, the message in this legislation need not be one that scares the dickens out of the private sector. Your colleague is absolutely right about that, and I believe our amendments move in that direction.

Mr. Epp: As a supplementary to that question, I wonder if the member for Brantford (Mr. Gillies) could help me with respect to the precedents that are out there, so that I am in a better position to know whether I should be supporting this amendment.

Ms. Gigantes: Bill 82.

Mr. Gillies: I could point you to any number of budget bills. With every provincial budget there are measures undertaken by the province in terms of tax increases or adjustments that are phased in, sometimes over three years, sometimes over five years. I think of the legislation your colleague the Treasurer (Mr. Nixon) brought in regarding certain retail sales tax measures that had been phased in. Ms. Gigantes just mentioned Bill 82; a time frame and a period of time was required for the implementation of that.

If you would like me to get more precedents at another time, I am sure they are legion.

Ms. Gigantes: It is in order.

Mr. Epp: It is in order. Is that a ruling from the member for Ottawa Centre?

Mr. Chairman: It is her opinion.

Mr. D. R. Cooke: It is in order to have an adjournment at this time so Mr. Gillies can get more precedents.

Mr. Chairman: Ms. Gigantes wishes to speak, and the minister has indicated he has some modest interest in contributing to the discussion as well. I will go to Ms. Gigantes first.

Mr. Epp: Mr. Chairman, I was wondering whether you would be concerned with Ms. Gigantes trying to usurp your position by making a ruling that it is in order. Do you have any comments with regard to that?

Mr. Chairman: Only to this effect, Mr. Epp: Ms. Gigantes has been most helpful on this committee, and I have frequently looked to her for guidance and counsel. I do not always accept her opinion, but on many occasions I have found her to be correct.

Mr. D. R. Cooke: A new accord.



Mr. Chairman: I will now defer to Ms. Gigantes, who will take the floor.

Ms. Gigantes: I do not really wish to speak, but I will. Mr. Chairman, I was not speaking to you; I was making an aside to Mr. Epp because I knew he would raise the question of whether it was in order. I think we can vote on this.

The members of the Liberal Party seem to think it is a good idea that if we are going to achieve equal pay for work of equal value, we should set a target or goal that women, employers and all of Ontario will understand. We are providing in this amendment at least a one per cent upfront payment plus one per cent per year on payroll.

The minister assures us the scenario I presented yesterday, where there would be 12 years at one per cent to achieve equal pay for work of equal value, is not something we have to worry about; it is an extreme situation. The five-year cap proposed by the sub-subamendment provides that assurance in a way that I think is going to be met and understood.

Hon. Mr. Wrye: Let me start out by saying I listened to the debate. Certainly we in the government believe pay equity, as we used to call it, can be achieved in approximately four years if one assumes one per cent a year, but the wage gap is about four per cent in the narrow Ontario public sector. As you know, the bill has been widened somewhat.

At the outset, let me ask a question. As a member of the government, which has tried to make the point about this procedural nicety before, and since we have a new amendment on the floor which you have not previously ruled on, may I ask whether this is in order, since it commits the government to the expenditure of money beyond what the bill committed.

Mr. Chairman: As the minister will recall, the decision was made by the chair initially on this point. That decision was challenged by the committee and overruled. As chairman, I am simply in compliance with the wish of this committee. The majority has made the decision that the size and scope of the bill can be enlarged. It is not a question of what my ruling is, because I have already made that. I have indicated my feelings on it. To raise again the very point that has already been dealt with, I suggest to you, is out of order.

Hon. Mr. Wrye: It was not clear to me whether you wished to rule on what is in effect a new amendment. I accept your view on this matter, that the will of the committee has been clearly taken, rightly or wrongly.

On the part of the government, I indicate that the government does not support the amendment. It does not support the amendment because the amendment is out of order. We do not support the amendment for that very simple reason. The amendment commits the government to additional expenditures of money. It commits it to the achievement of pay equity in five years.

In point of fact, the government believes that in the narrow public sector--I realize we are having a little difficulty here in dealing with apples and oranges as the committee tries to construct a bill after the kinds of changes that were made with section 2.

The view of the government is to commit a minimum of one per cent a year until the achievement of pay equity. The government bill does not state

putting a time limit on the matter, although we believe that even at one per cent a year, certainly in the narrow public sector--and my colleague the Attorney General (Mr. Scott) will speak to the wider public sector and the private sector in the days to come--the achievement of pay equity will occur in less than five years.

17:40

Nevertheless, it is the view of the government that the amendment is out of order. I hear your comments, Mr. Chairman, and I appreciate them; I do not wish to put you in the middle, but the government will not support the motion for the same reason that the government believes and is seriously concerned about the nature of the many other amendments that are being moved in this committee as almost a precedent to every parliamentary tradition we follow.

The Premier (Mr. Peterson) has made those comments. The Treasurer made those comments. It should not come as a surprise to the committee that the government will continue to be consistent and indicate that the parliamentary rules, which have been established for many hundreds of years in this parliament and in others, will continue to be followed, in the government's view, subject to the will of this committee and the will of the Legislature.

The government holds the view that it is the government which will determine the expenditures of dollars and that motions which commit to the expenditures of money, and this motion contemplates that, are not in order. That is the view of the government, and I think it is consistent with the view it has taken on the other motions that were put and challenged on a procedural basis.

Mr. Charlton: It never fails to amaze me how a government whose life began with parliamentary innovation, new parliamentary precedent, finds changes in procedure so difficult when it does not like them, even though innovative procedures are very useful when it comes to changing governments.

It never fails to amaze me how the good minister wants to have it both ways. I call your attention to yesterday's debate, to the chart which still sits at the front and to the minister's clear allegation yesterday that the chart was the outer limits, the exception, the extreme, that to achieve equal pay would not take the kind of time we were suggesting. Yet now, when we move an amendment that suggests five years, the minister says that amendment is out of order because it expends public funds.

The minister cannot have it both ways. I invite him to correct the record on one or the other of the two issues before the committee, either the facts that were presented by my colleague the member for Ottawa Centre (Ms. Gigantes) yesterday and their relevance in this debate or to concede that this amendment is in order because it does not cause the expenditure of any public funds since those facts are incorrect and his comments of yesterday are still valid.

He cannot have it both ways. He cannot sit here and say the four or five years his original bill suggests will accomplish equal pay for work of equal value and those facts are all balderdash, and then suggest a five-year cap will expend public funds the bill is not already going to expend. He cannot have it both ways. The minister should make up his mind which is the truth, put that on the record, and then we will vote on that basis.



Mr. D. R. Cooke: I am quite confused now. When I heard this amendment, it seemed this would be a money-saving amendment, or it was proposed as one in view of the policing costs being reduced. Now we hear it is not. Can Mr. Gillies let us know what it would cost to carry out the provisions of section 7 without the amendment and what it will cost with the amendment?

Mr. Gillies: I am sorry. I am somewhat confused. I do not recall ever having made an argument about policing. Somebody else made that observation.

Mr. D. R. Cooke: I assumed that argument. I may not have heard it from you. Surely the cost of policing during the course of whatever number of years, in the case Ms. Gigantes has shown us, 10 or 11 years, would be a factor that would be eliminated, would it not, with the capping of this, or is that not the case?

Mr. Gillies: It could be. Frankly, that had not occurred to me as a major factor, but if you had an agency that, without the cap, would take eight, nine, 10 or 11 years to implement pay equity, with the ongoing expense accruing to the government of doing so and that process can be condensed into a five-year period, I suppose in some cases that may save some administrative costs.

I will concede that one of the benefits of this amendment, as far as we are concerned, is that it is going to achieve pay equity faster. Through the government funding, rather than having cases drag on eight, nine or 10 years with, let us say, one per cent increases every year in some cases where it is required to take that long, we are going to condense the process. In some agencies, that may lead to the expenditure of more funds in a shorter period of time, but we accept that because we want it done.

Mr. D. R. Cooke: You are indicating then that you have no evidence one way or another and that it was not a factor in your proposing the amendment.

Mr. Gillies: No, it was not, but I think it is yet another benefit of the amendment that I had not thought of.

Mr. D. R. Cooke: It is not a benefit obviously, because the minister has indicated otherwise. I was hoping I would hear some argument from you to the effect that it is a benefit.

Mr. Gillies: The minister, who seems to be stuck in the past somewhere, keeps talking about Bill 105 with its application to the narrow public sector. That Bill 105 does not exist any more. That Bill 105, which he cites as having a wage gap of approximately four per cent, is long gone. The new Bill 105, as amended by this committee, embraces a much broader public sector, as you know, with all kinds of different agencies and people. The four per cent gap assumption goes out the window with the new group.

In fact, in our own ridings in nursing homes where the male orderlies are paid an enormously greater amount of money than some of the female attendants and cleaning staff at the same establishment and where the wage gap is way beyond four per cent, those are the people that I think are going to benefit most from this amendment, as opposed to the Ontario government's own employees.

Mr. D. R. Cooke: It is most unfortunate Mr. Gillies has not properly researched his amendment. I will have to withdraw my support until such time as he has.

Interjection: Good trick.

Hon. Mr. Wrye: I would like to pursue this gap for a second. I would like to ask Mr. Charlton, because he suggested that somehow I am trying to have it both ways--and I really cannot leave it without some debate--if he wants to comment on the fact that in Manitoba they are proposing a four per cent pay equity increase in the broader public sector. As I look at that, I do not know whether you know something Manitoba does not know or whether your NDP friends in Manitoba simply propose a piece of legislation that will totally and adequately handle the problems faced by the women of Manitoba, which in terms of their shortage in pay equity are not much different to those of Ontario.

Manitoba is handling this matter in a very different way. They have four per cent and that is it. I guess what you are saying is that is totally, wholly and completely inadequate. Is that what you are suggesting? The Pawley government has failed the women of Manitoba?

Mr. Charlton: Let me say two things that I understand to be the case in Manitoba. My colleague can correct me if I am wrong, because I have not been through it in the same detail as she has. My understanding with the Manitoba plan is that it is a twofold plan. I do not necessarily agree with that. What we are saying here today is that is not the approach we would take.

The Manitoba approach is a pay equity approach in the initial stage for four years, and then they intend to move to full equal pay for equal value, a step that has been totally missing from the approach you have taken in Ontario.

17:50

Hon. Mr. Wrye: Is that in the legislation? I must have missed that. You suggest that this is somehow a typical example; it is not. Mr. Gillies says we do not want a narrow public sector bill. Presumably in the broader public sector, with some exceptions, Manitoba certainly does not think it is going to be a whole lot more than four per cent. Once they get around to starting to pay it out, they propose to pay not a minimum of one per cent a year but only one per cent a year. They are going to put a four-year cap on it when they start paying it in September 1988.

Ms. Gigantes: That is correct.

Hon. Mr. Wrye: About two years from now. That is what your friends in Manitoba are going to do. I will give them credit. They are the only other jurisdiction, other than Ontario, with a proactive pay equity plan.

Ms. Gigantes: We do not have one yet in Ontario.

Hon. Mr. Wrye: We have one here in the narrow public sector, which this committee in its wisdom has broadened.

Ms. Gigantes: You know it has not been passed. It is never going to get passed at the rate you are going.



Hon. Mr. Wrye: The fact of the matter is that the Attorney General will shortly bring forward legislation which will put Ontario in the forefront of North America.

Mr. Charlton: It still avoids the point I just raised, that we are talking about two different things here.

Hon. Mr. Wrye: I do not think so. Well, we may be talking about two very different things.

Mr. Charlton: Sure. You said it yourself a few moments ago. You said we used to call it pay equity. This bill no longer says pay equity, and one per cent in four years will not provide equal pay for equal value.

Hon. Mr. Wrye: That is fine. In the government's view, the amendment continues to be completely out of order, because it commits the government to expenditures.

Ms. Gigantes: That comment is out of order. We have made a decision on that.

Mr. Charlton: That is right.

Mr. Chairman: Are you ready for the question?

Mr. Charlton: You signed an agreement which said you were going to bring in equal pay for work of equal value. We thought you just made a mistake.

Mr. Chairman: I will call the question.

Mr. Fpp: Before you call the question, I would like to ask your indulgence, because we would like 20 minutes to discuss this. It is important. This is quite an important amendment, as you can appreciate. It does commit the government to additional expenditure of funds, and, being the parliamentary assistant to the Minister of Revenue, I am concerned about that. It is always important that we make sure we have those funds available. We do need time, and it being 5:50 p.m., I am not sure 20 minutes will go quickly. You will have to narrow it down. I am not sure.

Mr. Charlton: The committee has no authority to sit past six o'clock.

Mr. Epp: We cannot sit past six o'clock; so perhaps we should leave it until the next day then.

Mr. Chairman: Mr. Charlton is absolutely correct. He reminds me that, the clock now showing 5:50 p.m., your request for a 20-minute recess will take us past the allotted time; so I will consider that our committee is adjourned for now.

Ms. Gigantes: I would like to indicate on behalf of the NDP members that we see no point in joining in a subcommittee discussion of the planning of this committee's work beyond this bill until we get some indication from the government of when it intends to proceed with this bill. It seems to me what we have seen is the government refusing to allow this bill to proceed through the amendment stage. That being the case, how can we plan any other work?

Mr. Chairman: I tend to agree with that. Since we are talking about the scheduling of the committee, Mr. O'Connor made the initial request that we have a subcommittee meeting. Is it now your position that we do not hold such a subcommittee meeting?

Mr. O'Connor: All I was going to suggest is that the subcommittee can determine that the next order of business after Bill 105, when and as it is concluded, be Bill 42. That was going to be my proposal.

Mr. Chairman: Since we have no idea of when we will finish Bill 105--

Mrs. Marland: I wonder whether I can speak.

Mr. Chairman: We had officially adjourned.

Mrs. Marland: In order officially to adjourn, someone has to place the motion and there has to be a vote. No one has moved a motion to adjourn this meeting. There was simply a discussion about whether we would have a 20-minute recess.

Mr. Charlton: This committee will be adjourned without motion.

Mrs. Marland: I would like to state for the record, as a legal substitute to this committee this afternoon, that I would be embarrassed if the public of this province had witnessed what has taken place this afternoon. First, the meeting started at least one hour late because of the choice of the Liberal members of the committee to sit in the House, for whatever purpose.

We start one hour late and we then debate from 4:30 to 5 p.m. a matter which took place yesterday at this committee, as I understand. Then we adhere to the request of a Liberal member for a 20-minute recess from 5 p.m. to 5:20 in order for his members to further discuss the matter which took place at yesterday's committee meeting.

We come back at 5:20 p.m. and we have now spent another half-hour going absolutely nowhere, to the point where at 5:50 p.m. we get a very clever request for another 20-minute recess to discuss a matter, which obviously is going to mean this committee does not continue today.

If I really thought this is what parliamentary procedure was all about in terms of getting the work of a responsible government through in the province, I would not want to be any part of it. I think this is a terrible use of elected members' time. I think it shows a total lack of responsibility on the part of the members of the government, including the minister who is here this afternoon, because he obviously has been party to this whole procedure that I sat here and witnessed.

I cannot believe what has taken place. It is too bad this particular meeting at this juncture was not being televised around the province because it would be a very clear explanation to the people of Ontario of what they have currently with the Liberal government, which has no commitment to its own legislation.

Mr. Epp: I am not sure whether Mrs. Marland is challenging your ruling.



Mr. D. R. Cooke: Some months ago the freedom-of-information legislation was sent to committee. I heard on the radio this morning that the Leader of the Opposition (Mr. Grossman) is now prepared to release it from committee so that it can come back for third reading. Is that before our committee and can we deal with it now and have it sent back?

Mr. O'Connor: That is quite incorrect. He has no jurisdiction to release anything from committee. The order of business is up to the House leaders and the government. In any event, it was not ordered to come to this committee.

Mr. Chairman: We have no such indication from the government.

Mr. O'Connor: The offer made by the Leader of the Opposition was to pass nine specific bills in one day and it did not include freedom of information. It included junk legislation that is up in the House now.

Mr. Charlton: Everything that has happened in the last few minutes is out of order.

The committee adjourned at 5:59 p.m.















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